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Final Modification of the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Termination of the EPA NPDES Storm Water Baseline Industrial General Permit; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6162–4]

Final Modification of the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Termination of the EPA NPDES Storm Water Baseline Industrial General Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final notice of modifications to the NPDES Storm Water Multi-Sector General Permit for Industrial Activities and Termination of the EPA Storm Water Baseline Industrial General Permit.

SUMMARY: The Regional Administrators of EPA Regions I, II, III, IV, VI, IX, and X are today providing final notice of modifications to EPA's final NPDES Storm Water Multi-Sector General Permit (MSGP) which was first issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), and September 24, 1996 (61 FR 50020). EPA has modified the MSGP to authorize storm water discharges from previously excluded facilities so that they may be covered by the MSGP after expiration of EPA's Baseline Industrial General Permit. EPA also finalized the following limited specific changes to the MSGP as published on September 29, 1995 (60 FR 50804): (1) Authorization of mine dewatering discharges from construction sand and gravel, industrial sand, and crushed stone mines in EPA Regions I, II and X; (2) inclusion in Sector A of the MSGP of the effluent limitation guideline in 40 CFR Part 429, Subpart I for discharges resulting from spray down of lumber and wood products in storage yards (wet decking); (3) clarification that Sectors X and AA authorize discharges from all facilities in major SIC groups 27 and 34 respectively; (4) addition of new Sector AD to the MSGP to authorize discharges from Phase I facilities which may not fall into one of the original sectors of the permit, and selected Phase II discharges which are designated for permitting in accordance with 40 CFR 122.26(g)(1)(i); (5) modification of inspection requirements in Sector I for inactive oil and gas extraction facilities which are remotely located and unstaffed; (6) addition of new Addendum I to provide guidance and information to assist applicants with determining permit eligibility concerning protection of historic properties; and (7) update of the county/species list of endangered and threatened species found in Addendum H, and provide a listing of additional sources to reference for future updates to the list.

The Regional Administrators are also providing final notice that the Agency is not reissuing the NPDES storm water Baseline Industrial General Permit which was issued on September 9, 1992 (57 FR 41236) or September 25, 1992 (57 FR 44438), depending on the geographic area of applicability, and to terminate this permit (with the limited exceptions discussed in Section I below) upon final modification of the multi-sector permit. As a result, all industrial facilities previously permitted under the Baseline Industrial General Permit, except as otherwise specified in this notice, are required to seek storm water permit coverage under the modified MSGP within 90 days after the publication of this final notice or submit an application for an individual NPDES permit.

This action also provides notice for the issuance of the final NPDES MSGP (including today's modifications) for storm water discharges associated with industrial activity for American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI). The geographic area of coverage of the MSGP is being revised today to include American Samoa and CNMI on the list of areas for which discharges may be authorized.

DATES: The modifications to the MSGP are effective upon publication of this notice for discharges for which EPA is currently the permitting authority. This will allow new dischargers which have not been able to obtain discharge authorization since the Baseline Industrial General Permit expired to obtain coverage under the MSGP as soon as possible. Except as specified otherwise in this notice, termination of administratively extended permit coverage for facilities permitted under the Baseline Industrial General Permit will take effect 92 days after the date of publication of this notice in areas where EPA is the NPDES permitting authority. Where EPA has approved State NPDES programs with authority over discharges covered by the Baseline Industrial General Permit, that permit will remain in effect by operation of law until superseded by either a State-issued NPDES permit or an EPA permit issued under section 402(d)(4) of the Clean Water Act.

ADDRESSES: The index to the administrative record for this permit is available at the appropriate Regional Office or from the EPA Water Docket Office in Washington, DC. The administrative record is stored in two locations. Documents immediately referenced in this modification notice are stored at the EPA Water Docket Office at the address listed below. All other documents which were used to support the original issuance of the MSGP in 1995 are a supplement to the record for this modification action but are stored at Science Applications International Corporation (SAIC), 1710 Goodridge Drive, McLean, Virginia 22102. These materials include, for example, the permit applications and sampling data provided to EPA by group applicants. The immediate and supplemental record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For appointments to examine any portion of the administrative record, please call the Water Docket Office at (202) 260–3027. Copies of the final permit modifications may be acquired from the Office of Water Resource Center by dialing (202) 260–7786. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

FOR FURTHER INFORMATION CONTACT: For further information on the final permit modifications, contact the appropriate EPA Regional Office. The name, address and phone number of the EPA Regional Storm Water Coordinators are provided in Part III.H of this Fact Sheet.

SUPPLEMENTARY INFORMATION: The following Fact Sheet provides background information and explanations for the permitting actions and modifications taken by EPA in today's notice. The actual language of the final permit modifications appears after Appendix B of the Fact Sheet.

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I. Background

On September 9, 1992 (57 FR 41175) or September 25, 1992 (57 FR 44412), depending on the geographic area involved, EPA issued a final NPDES storm water baseline industrial general permit (not including construction activity) for the following areas:

EPA Region I—for the States of Maine, Massachusetts and New Hampshire; and for Indian country located in Massachusetts, New Hampshire and Maine.

EPA Region II—for Puerto Rico and Indian country located in New York. (On April 14, 1993, EPA proposed modifications to the baseline general permit issued in Puerto Rico to address changes to the 401 certification conditions requested by the Environmental Quality Board (EQB) of Puerto Rico. On September 24, 1993 the changes became final. These modifications, however, did not alter the original issuance and expiration date of the baseline general permit in Puerto Rico.)

EPA Region III—for the District of Columbia and Federal facilities in Delaware.

EPA Region IV—for the State of Florida; and for Indian country located in Florida, Mississippi, and North Carolina.

EPA Region VI—for the States of Louisiana, New Mexico, Oklahoma and Texas; and for Indian country located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

EPA Region VIII—for the State of South Dakota; for Indian country located in Colorado, Montana, South Dakota, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation in Colorado and New Mexico.

EPA Region IX—for the State of Arizona; for the Territories of Johnston Atoll, American Samoa, Guam, and Midway and Wake Islands; and for Indian country located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

EPA Region X—for the States of Alaska and Idaho; for Indian country located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

Most of the above areas were covered by the September 9, 1992, notice of permit issuance. The September 25, 1992, notice covered only the States of Florida (except for Indian lands which were covered by the September 9, 1992 notice) and Massachusetts, Puerto Rico, the District of Columbia, Guam and American Samoa, Indian country in New York and Federal facilities in Delaware. The baseline permit expired on September 9, 1997 or September 25, 1997, depending on the area of applicability, and EPA is not reissuing the baseline permit in those areas where today's MSGP modification is effective. As a result, most industrial facilities previously permitted under the baseline permit (except for those located in certain excluded areas discussed below) are therefore required to seek storm water permit coverage under today's modified MSGP or an individual permit. The MSGP which was originally issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), and September 24, 1996 (61 FR 50020).

The excluded areas where the baseline permit will continue to apply are those areas where the baseline permit had been effective, but where the modified MSGP is not effective. These areas include Federal facilities in Colorado, and Indian country located in Colorado (including the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota, South Dakota (including the portion of the Pine Ridge Reservation located in Nebraska), Utah (except for the Goshute and Navajo Reservation lands (see Region IX)) and Wyoming. Maintaining storm water permit coverage under the baseline permit is necessary since the MSGP does not apply to facilities located in these areas, and the Agency is not expanding the MSGP's scope of coverage to include them through this modification. In addition, for facilities where individual permits are required, baseline permit coverage will be extended until final determinations are made on the individual permit applications.

EPA's July 11, 1997 notice of the proposed modification of the MSGP had included American Samoa among the areas where the baseline permit would be extended (62 FR 37448). However, since the MSGP is now effective in American Samoa by today's action (see Section X below), extension of the baseline permit is no longer necessary in this area.

There are also a few areas where the baseline permit was issued but not the MSGP, where the baseline permit is nevertheless being terminated. These areas are Indian country in New York, North Carolina and Mississippi. Only a very small number of permittees exist in these areas and individual permits will be issued as needed.

Permit numbers for New Hampshire Federal Indian Reservations (NHR05*##F) and Vermont Federal Indian Reservations (VTR05*##F) have been removed from the EPA Region I ''Areas of Coverage'' in the final permit modification because no Federally recognized Tribes exist in these States.

It should also be pointed out that in certain states which had been covered by the 1992 baseline permit, the NPDES permit program has now been delegated to the state (except for Indian country in these states). These states are South Dakota, Louisiana and Oklahoma, and permittees in these states (except for certain oil and gas facilities in Oklahoma) are now subject to permitting by the state. In Oklahoma, EPA will maintain NPDES permitting authority over oil and gas exploration and production related industries, and pipeline operations, which are regulated by the Oklahoma Corporation Commission (See 61 FR 65049). Oklahoma received NPDES program authorization for only those discharges covered by the authority of the Oklahoma Department of Environmental Quality (ODEQ).

The action of transferring permittees currently covered by the baseline permit to the MSGP is consistent with the long-term permitting strategy for storm water discharges associated with industrial activity which was finalized on April 2, 1992 (57 FR 11394). This strategy includes the following four permitting tiers:

Tier I—Baseline Permitting—One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity.

Tier II—Watershed Permitting—Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.

Tier III—Industry-Specific Permitting—Specific industry categories will be targeted for individual or industry-specific general permits.

Tier IV—Facility-Specific Permitting—A variety of factors will be used to target specific facilities for individual permits.

The long-term permitting strategy begins with baseline permitting as was done in 1992 with the baseline general permit. However, baseline permitting may not provide optimum water quality benefits since the same basic permit conditions are applied to a wide variety of facilities operating in different geographic areas. As such, the long-term strategy also calls for additional permitting over time with more specific permit conditions developed for facilities in Tiers II, III and IV above.

The MSGP is based on information received as a result of the group permit application process described at 40 CFR 122.26(c)(2). EPA received applications from approximately 1,200 groups representing nearly all of the categories of industrial facilities listed in the storm water regulations at 40 CFR 122.26(b)(14). To facilitate permit issuance for the group applications, EPA consolidated the groups into 29 industrial sectors, with subsectors also included in certain sectors as appropriate.

The group applications included information concerning the specific types of operations which are present at the different types of industrial facilities, potential sources of pollutants from the facilities, industry-specific best management practices (BMPs) which are available, and monitoring data from the different types of facilities. Using this information, EPA was able to develop sector-specific BMPs for the MSGP which are better tailored to controlling the discharges of pollutants from the various facilities than the requirements of the baseline permit which only include generic BMP requirements which are applied across a wide variety of industries. In addition, the monitoring requirements of the MSGP are based on actual monitoring data rather than best professional judgment which is largely the case for the baseline permit.

Given the above factors, EPA believes that the MSGP should provide improved water quality benefits as compared to the baseline permit. For this reason, and in accordance with the long-term permitting strategy, EPA is transferring permit coverage from the baseline permit to the MSGP after expiration of the baseline permit.

As discussed in Section II below, the MSGP omitted coverage for a small number of categories of facilities which were authorized to discharge under the baseline general permit. As such, EPA is today modifying the coverage of the MSGP to include these categories in order that they may be eligible for coverage when transferring from the baseline permit to the MSGP.

II. Coverage of Final Modified MSGP

The final modified multi-sector storm water permit covers storm water discharges associated with industrial activity in most geographic areas where EPA is the NPDES permitting authority, described earlier in this fact sheet. In accordance with the long-term permitting strategy discussed above, EPA's intent when issuing the baseline general permit was to cover all of the categories of industrial facilities which may discharge storm water associated with industrial activity as defined at 40 CFR 122.26(b)(14). The baseline permit did include certain generic coverage limitations which are also found in Section I.B.3 of the MSGP. These exclusions include discharges such as those which may contribute to a violation of a water quality standard, and discharges which adversely affect endangered species or their critical habitat.

As noted above, group applications were not received from all of the categories of facilities listed at 40 CFR 122.26(b)(14), and certain categories were not included in the MSGP which had been included in the baseline permit. In order to cover all the types of facilities to be transferred from the baseline permit, EPA is today expanding the coverage of the MSGP to authorize storm water discharges from these additional categories of facilities.

The MSGP had already authorized storm water discharges from a wide range of industrial facilities which are summarized below in Table 1:

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE MSGP

Subsector	SIC code	Activity represented
	Sector A. Timber Products	
1*	2421	General Sawmills and Planning Mills.
2	2491	Wood Preserving.
3*	2411	Log Storage and Handling.
4*	2426	Hardwood Dimension and Flooring Mills.
	2429	Special Product Sawmills, Not Elsewhere Classified.
	243X** (except 2434)	Millwork, Veneer, Plywood, and Structural Wood.
	244X	Wood Containers.
	245X	Wood Buildings and Mobile Homes.
	2493	Reconstituted Wood Products.
	2499	Wood Products, Not Elsewhere Classified.
	Sector B. Paper and Allied Products Manufacturing	
1	261X	Pulp Mills.
2	262X	Paper Mills.
3*	263X	Paperboard Mills.
4	265X	Paperboard Containers and Boxes.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE MSGP—Continued

Subsector	SIC code	Activity represented
5	267X	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C. Chemical and Allied Products Manufacturing		
1*	281X	Industrial Inorganic Chemicals.
2*	282X	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass.
4*	284X	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
5	285X	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
6	286X	Industrial Organic Chemicals.
7*	287X	Agricultural Chemicals.
8	289X	Miscellaneous Chemical Products.
9	3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.
Sector D. Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers		
1*	295X	Asphalt Paving and Roofing Materials.
2	299X	Miscellaneous Products of Petroleum and Coal.
Sector E. Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing		
1	321X	Flat Glass.
	322X	Glass and Glassware, Pressed or Blown.
	323X	Glass Products Made of Purchased Glass.
2	3241	Hydraulic Cement.
3*	325X	Structural Clay Products.
	326X (except 3261)	Pottery and Related Products.
	3297	Non-Clay Refractories.
4*	327X (except 3274)	Concrete, Gypsum and Plaster Products.
	3295	Minerals and Earth's, Ground, or Otherwise Treated.
Sector F. Primary Metals		
1*	331X	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
2*	332X	Iron and Steel Foundries.
3	333X	Primary Smelting and Refining of Nonferrous Metals.
4	334X	Secondary Smelting and Refining of Nonferrous Metals.
5*	335X	Rolling, Drawing, and Extruding of Nonferrous Metals.
6*	336X	Nonferrous Foundries (Castings).
7	339X	Miscellaneous Primary Metal Products.
Sector G. Metal Mining (Ore Mining and Dressing) ***		
1	101X	Iron Ores.
2*	102X	Copper Ores.
3	103X	Lead and Zinc Ores.
4	104X	Gold and Silver Ores.
5	106X	Ferroalloy Ores, Except Vanadium.
6	108X	Metal Mining Services.
7	109X	Miscellaneous Metal Ores.
Sector H. Coal Mines and Coal Mining-Related Facilities		
NA*	12XX	Coal Mines and Coal Mining-Related Facilities.
Sector I. Oil and Gas Extraction		
1*	131X	Crude Petroleum and Natural Gas.
2	132X	Natural Gas Liquids.
3*	138X	Oil and Gas Field Services.
Sector J. Mineral Mining and Dressing		
1*	141X	Dimension Stone.
	142X	Crushed and Broken Stone, Including Rip Rap.
	148X	Nonmetallic Minerals, Except Fuels.
2*	144X	Sand and Gravel.
3	145X	Clay, Ceramic, and Refractory Materials.
4	147X	Chemical and Fertilizer Mineral Mining.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE MSGP—Continued

Subsector	SIC code	Activity represented
	149X	Miscellaneous Nonmetallic Minerals, Except Fuels.
Sector K. Hazardous Waste Treatment Storage or Disposal Facilities		
NA*	NA	Hazardous Waste Treatment Storage or Disposal.
Sector L. Landfills and Land Application Sites		
NA*	NA	Landfills and Land Application Sites.
Sector M. Automobile Salvage Yards		
NA*	5015	Automobile Salvage Yards.
Sector N. Scrap Recycling Facilities		
NA*	5093	Scrap Recycling Facilities.
Sector O. Steam Electric Generating Facilities		
NA*	NA	Steam Electric Generating Facilities.
Sector P. Land Transportation		
1	40XX	Railroad Transportation.
2	41XX	Local and Highway Passenger Transportation.
3	42XX (except 4221–4225)	Motor Freight Transportation and Warehousing.
4	43XX	United States Postal Service.
5	5171	Petroleum Bulk Stations and Terminals.
Sector Q. Water Transportation		
NA*	44XX	Water Transportation.
Sector R. Ship and Boat Building or Repairing Yards		
NA	373X	Ship and Boat Building or Repairing Yards.
Sector S. Air Transportation Facilities		
NA*	45XX	Air Transportation Facilities.
Sector T. Treatment Works		
NA*	NA	Treatment Works.
Sector U. Food and Kindred Products		
1	201X	Meat Products.
2	202X	Dairy Products.''
3	203X	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.
4*	204X	Grain Mill Products.
5	205X	Bakery Products.
6	206X	Sugar and Confectionery Products.
7*	207X	Fats and Oils.
8	208X	Beverages.
9	209X	Miscellaneous Food Preparations and Kindred Products Manufacturing.
	21XX	Tobacco Products Manufacturing.
Sector V. Textile Mills, Apparel, and Other Fabric Product		
1	22XX	Textile Mill Products.
2	23XX	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
Sector W. Furniture and Fixtures		
NA	25XX	Furniture and Fixtures.
	2434	Wood Kitchen Cabinets.
Sector X. Printing and Publishing		
NA	2732	Book Printing.
	2752	Commercial Printing, Lithographic.
	2754	Commercial Printing, Gravure.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE MSGP—Continued

Subsector	SIC code	Activity represented
	2759	Commercial Printing, Not Elsewhere Classified.
	2796	Platemaking and Related Services.
Sector Y. Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries		
1*	301X	Tires and Inner Tubes.
	302X	Rubber and Plastics Footwear.
	305X	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
	306X	Fabricated Rubber Products, Not Elsewhere Classified.
2	308X	Miscellaneous Plastics Products.
	393X	Musical Instruments.
	394X	Dolls, Toys, Games and Sporting and Athletic Goods.
	395X	Pens, Pencils, and Other Artists' Materials.
	396X	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
	399X	Miscellaneous Manufacturing Industries.
Sector Z. Leather Tanning and Finishing		
NA	311X	Leather Tanning and Finishing.
NA	NA	Facilities that Make Fertilizer Solely from Leather Scraps and Leather Dust.
Sector AA. Fabricated Metal Products		
1*	3429	Cutlery, Hand Tools, and General Hardware.
	3441	Fabricated Structural Metal Products.
	3442	Metal Doors; Sash, Frames Molding and Trim.
	3443	Fabricated Plate Work (Boiler Shops).
	3444	Sheet Metal Work.
	3451	Screw Machine Products.
	3452	Bolts, Nuts, Screws, Rivets, and Washers.
	3462	Metal Forgings and Stampings.
	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring.
	3494	Valves and Pipe Fittings, Not Elsewhere Classified.
	3496	Miscellaneous Fabricated Wire Products.
	3499	Miscellaneous Fabricated Metal Products.
	391X	Jewelry, Silverware, and Plated Ware.
2*	3479	Coating, Engraving, and Allied Services.
Sector AB. Transportation Equipment, Industrial or Commercial Machinery		
NA	35XX (except 357)	Industrial and Commercial Machinery (except Computer and Office Equipment.
NA	37XX (except 357)	Transportation Equipment (except Ship and Boat Building and Repairing).
Sector AC. Electronic, Electrical, Photographic and Optical Goods		
NA	36XX	Electronic, Electrical.
	38XX	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods.
	357	Computer and Office Equipment.

*Denotes subsector with analytical (chemical) monitoring requirements.
**X or XX denotes any number or numbers from 0 to 9 in the SIC code. NA indicates those industry sectors in which subdivision into subsectors was determined to be not applicable.
***EPA intends to issue a modification of the MSGP for this section shortly, in a separate FR notice.

EPA reviewed the categories of additional facilities to be added to the MSGP and also considered the coverage and existing requirements of the various sectors/subsectors already included in the MSGP. Based on this review, EPA concluded that for each category of facility to be added, a sector/subsector of the MSGP was available with appropriate BMP and monitoring requirements for the new categories. The new categories of facilities, and the sectors/subsectors in which they have been added by today's MSGP modification, are summarized in Table 2 below. EPA has also added a new Sector AD which will allow coverage for any regulated storm water discharge associated with industrial activity not described by any of the other sectors.

TABLE 2.—PLACEMENT OF ADDITIONAL FACILITIES INTO THE MSGP

SIC code	MSGP sector/subsector
2833–2836—Medicinal chemicals and botanical products; pharmaceutical preparations; in vitro and in vivo diagnostic substances; biological products, except diagnostic substances.	Subsector i (Drugs) of Sector C—Chemical and Allied Products Manufacturing
2911—Petroleum refining	Sector I—Oil and Gas Extraction

TABLE 2.—PLACEMENT OF ADDITIONAL FACILITIES INTO THE MSGP—Continued

SIC code	MSGP sector/subsector
3131—Boot and shoe cut stock and findings (leather soles, inner soles, other boot and finished wood heels).	Sector V—Textile Mills, Apparel and other Fabric Products
3142–3144—house slippers; men's dress, street and work shoes; women's dress, street and work shoes.	Sector V—Textile Mills, Apparel and other Fabric Products
3149—Footwear, except rubber, include athletic shoes	Sector V—Textile Mills, Apparel and other Fabric Products
3151—Leather gloves and mittens	Sector V—Textile Mills, Apparel and other Fabric Products
3161—Luggage and cases	Sector V—Textile Mills, Apparel and other Fabric Products
3171—Women's handbags and purses, leather	Sector V—Textile Mills, Apparel and other Fabric Products
3172—Personal leather goods, e.g., billfolds, key cases, coin purses, checkbooks, etc..	Sector V—Textile Mills, Apparel and other Fabric Products
3199—Leather goods, not elsewhere classified, e.g., saddlery, belts, holsters, leather aprons.	Sector V—Textile Mills, Apparel and other Fabric Products
3231—Glass products, made of purchased glass	Subsector 1 (Glass Products) of Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3261—Vitreous china plumbing fixtures, and china and earthenware fitting and bathroom accessories.	Subsector 3 (Structural clay products, pottery and related products and non-clay refractories) of Sector E—Glass, Clay , Cement, Concrete and Gypsum Product Manufacturing
3274—Lime, agricultural/building lime, dolomite, lime plaster	Subsector 4 (Concrete, Gypsum and Plaster Products) of Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3281—Cut stone and stone products, benches, blackboards, table tops, pedestals, etc..	Subsector 1 (Glass Products) of Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3291—Abrasive products	Subsector 1 (Glass Products) of Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3292—Asbestos products, tiles, building materials, except paper, insulating pipe coverings.	Subsector 1 (Glass Products) of Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3296—Mineral wool, insulation	Subsector 1 (Glass Products) of Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
3299—Nonmetallic mineral products, not elsewhere classified, plaster of Paris and paper-mache, etc..	Subsector 1 (Glass Products) of Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
4221–5—Warehousing facilities without trucking services.	Subsector 3 (Motor Freight Transportation and Warehousing) of Sector P—Land Transportation
LF—Open dumps	Sector L—Landfills and Land Application Sites

After a permittee previously covered by the baseline permit transfers to the MSGP, the effluent limitations, monitoring requirements and other conditions of the MSGP apply to the permittee's facility as appropriate based on the sector/subsector in which facility falls. The requirements for the new categories of facilities which have been added to the MSGP are those set forth in the MSGP for the sectors/subsectors shown above in Table 2. Section III below discusses the differences between the baseline permit and the MSGP and the requirements for transferred facilities.

III. Requirements for Transferred Facilities

In today's notice, EPA is making certain clarifications and interpretations regarding how certain conditions of the MSGP will apply to permittees transferring from the baseline general permit. These interpretations and clarifications address: (1) Deadlines for storm water pollution prevention plan revisions and implementation for transferring permittees; (2) MSGP sampling schedules and sample types; (3) the submittal of sampling data; (4) applicability of certain limitations; (5) the applicability of the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA); (6) the applicability of the co-located activities requirements; (7) use of the NOI form; (8) applicability of the new North American Industry Classification System (NAICS); (9) non-storm water discharges; (10) releases of reportable quantities of hazardous substances and oil; and (11) exemptions from analytical monitoring. These clarifications are discussed below.

The requirements of the MSGP, including sector-specific requirements were described in detail in the fact sheet accompanying the original issuance of the MSGP (September 29, 1995, 60 FR 50804) and is incorporated by reference into this fact sheet. All transferring facility operators should acquire a copy of the 1995 multi-sector general permit and study it carefully to ensure full compliance with all terms and conditions. Certain important requirements for facilities which transfer to the MSGP from the baseline general permit are emphasized below.

A. Notifications Requirements

To obtain coverage under the modified MSGP, facilities which acquired extended coverage under the baseline industrial general permit in accordance with the provisions of the Administrative Procedures Act must submit a Notice of Intent (NOI) not later than 90 days after the effective date of this MSGP modification. Baseline general permittees that applied for and received extended coverage which are located in areas identified in Part II.A.9. of this modification where the permit is *not* being terminated may remain covered by the baseline permit until further notice from EPA. Conversely, baseline general permittees that applied for and received extended baseline permit coverage which are *ineligible* for MSGP coverage per Part II.A.10 must submit an application for an individual NPDES permit and may remain covered under the baseline permit until a final decision is made by EPA on their individual permit.

Under today's final modification, Part II.A.9 is added to the MSGP which includes a 90 day period after the effective date of the modified MSGP for submittal of an NOI for facilities transferring to the MSGP. The NOI form currently in use for the MSGP can be found in Addendum B to the MSGP published on September 29, 1995 (60 FR 51265). For convenience, this form is also attached to this modification.

The NOI form for the MSGP differs from the form for the original 1992 baseline permit in that new requirements have been added to ensure compliance with the National Historic Preservation Act (NHPA) and Endangered Species Act (ESA). A discussion of these requirements, as applicable to facilities transferring permit coverage to the MSGP, follows below:

1. Historic Preservation

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal undertakings, including undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term ''Federal undertaking'' is defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects for that project, activity, or program. See 36 CFR 802(o). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 802(e).

Federal undertakings include the EPA's issuance of general NPDES permits. In light of NHPA requirements, EPA included a provision in the eligibility requirements of the 1995 MSGP for the consideration of the effects to historic properties. That provision provides that an applicant is eligible for permit coverage only if: (1) the applicant's storm water discharges and best management practices (BMPs) to control storm water runoff do not affect a historic property, or (2) the applicant has obtained, and is in compliance with, a written agreement between the applicant and the State Historic Preservation Officer (SHPO) that outlines all measures to be taken by the applicant to mitigate or prevent adverse effects to the historic property. See Part I.B.6, 60 FR 51112 (September 29, 1995). When applying for permit coverage, applicants are required to certify in the NOI that they are in compliance with the Part I.B.6 eligibility requirements. Provided there are no other factors limiting permit eligibility, MSGP coverage is then granted 48 hours after the postmark on the envelope used to mail the NOI.

In today's modification EPA is including two revisions with respect to historic properties. First, EPA is amending Part I.B.6.(ii) to include a reference to Tribal Historic Preservation Officers (THPOs) because MSGP coverage extends to Tribal lands and in recognition of the central role Tribal governments play in the protection of historic resources. Second, EPA is including guidance and a list of SHPO and THPO addresses in new Addendum I to the MSGP to assist applicants with the certification process for permit eligibility under this condition.

Facilities being transferred from the baseline permit which cannot certify compliance with the NHPA requirements must submit individual permit applications to the permitting authority in accordance with the time frames set forth above for NOI submittal.

2. Endangered Species

The ESA of 1973 requires Federal Agencies such as EPA to insure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the ''Services''), that any actions authorized, funded, or carried out by the Agency (e.g., EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c)). This consultation resulted in a joint Service biological opinion issued by the FWS on March 31, 1995, and by the NMFS on April 5, 1995, which concluded that the issuance and operation of the MSGP was not likely to jeopardize the existence of any listed endangered or threatened species, or result in the adverse modification or destruction of any critical habitat. The MSGP contains a number of conditions to protect listed species and critical habitat. Permit coverage is only provided where:

- The storm water discharge(s), and the construction of Best Management Practices (BMPs) to control storm water runoff, are not likely to adversely affect species identified in Addendum H of the permit; or
- The applicant's activity has received previous authorization under the Endangered Species Act and established an environmental baseline that is unchanged; or,
- The applicant is implementing appropriate measures as required by the Director to address adverse effects.

Addendum H of the permit contained a list of proposed and listed endangered and threatened species that could be affected by the discharges and measures to control pollutants in the discharges. The Addendum also provided instructions to assist applicants in determining whether they met the above eligibility requirements.

Because EPA determined that this permit modification is an action that may affect listed endangered and threatened species, EPA reinitiated ESA § 7 consultation on July 16, 1997. On April 24, 1998, the US Fish and Wildlife Service and on May 1, 1998, the National Marine Fisheries Service provided written concurrences on EPA's findings that this modification is not likely to result in adverse effects to listed species or critical habitat.

As a result of this consultation and in response to public comments on the modification, EPA has updated the species list in Addendum H to include species that were listed or proposed for listing since the Addendum H list was compiled on March 31, 1995. EPA has also decided to expand the list to include all of the terrestrial (i.e., non-aquatic) listed and proposed species in recognition that those species may be impacted by permitted activities such as the construction and operation of the BMPs. The Addendum H list will be updated on a regular basis and an electronic copy of that list will be made available at the Office of Wastewater Management website at ''http://www.epa.gov/owm''. Information on the availability of an electronic list is also being added to the Addendum H instructions. Addendum H, updated as of July 8, 1998, has been attached in Section VII of today's final MSGP modification.

EPA is not changing any other ESA-related conditions in this modification because it believes that the current permit conditions have been successful in ensuring the protection of listed and proposed species and critical habitat.

To be eligible for coverage under the MSGP, facilities which are being transferred from the baseline permit must review the list of species and their locations which are contained in the updated Addendum H of the MSGP and which are described in the instructions for completing the application requirements under this permit. If an applicant determines that none of the species identified in the Addendum are found in the county in which the facility is located, then there is no likelihood of an adverse effect and they are eligible for permit coverage. Applicants must then certify that their discharges, and the construction of storm water BMPs, are not likely to adversely affect species and will be granted MSGP permit coverage 48 hours

after the date of the postmark on the envelope used to mail the NOI form, provided there are no other factors limiting permit eligibility.

If species identified in Addendum H are found to be located in the same county as the facility seeking MSGP coverage, then the applicant must determine whether the species are in proximity to the storm water discharges at the facility, or any BMPs to be constructed to control storm water runoff. A species is in proximity to a storm water discharge when the species is located in the path or down gradient area through which or over which point source storm water flows from industrial activities to the point of discharge into the receiving water, and once discharged into the receiving water, in the immediate vicinity of, or nearby, the discharge point. A species is also in proximity if a species is located in the area of a site where storm water BMPs are planned to be constructed. If an applicant determines there are no species in proximity to the storm water discharge, or the BMPs to be constructed, then there is no likelihood of adversely affecting the species and the applicant is eligible for permit coverage.

If species are in proximity to the storm water discharges or areas of BMP construction, as long as they have been considered as part of a previous ESA authorization of the applicant's activity, and the environmental baseline established in that authorization is unchanged, the applicant may be covered under the permit. The environmental baseline generally includes the past and present impacts of all Federal, state and private actions that were occurring at the time the initial NPDES authorization and current ESA section 7 action by EPA was taken. Therefore, if a permit applicant has received previous authorization and nothing has changed or been added to the environmental baseline established in the previous authorization, then coverage under this permit will be provided.

In the absence of such previous authorization, if species identified in Addendum H are in proximity to the discharges or construction areas for BMPs, then the applicant must determine whether there is any likely adverse effect upon the species. This is done by the applicant conducting a further examination or investigation, or an alternative procedure, as described in the instructions in Addendum H of the permit. If the applicant determines that there is no likely adverse effect upon the species, then the applicant is eligible for permit coverage. If the applicant determines that there likely is, or will likely be an adverse effect, then the applicant is not eligible for MSGP coverage.

All dischargers applying for coverage under the MSGP must provide in the application information on the Notice of Intent form: (1) A determination as to whether there are any species identified in Addendum H in proximity to the storm water discharges and BMP construction areas, and (2) a certification that their storm water discharges and the construction of BMPs to control storm water are not likely to adversely affect species identified in Addendum H, or are otherwise eligible for coverage due to a previous authorization under the ESA. Coverage is contingent upon the applicant's providing truthful information concerning certification and abiding by any conditions imposed by the permit.

Dischargers (including those being transferred to the MSGP from the baseline permit) who are not able to determine whether there will be any adverse effect on species, cannot sign the certification to gain coverage under the MSGP and must apply to EPA for an individual NPDES storm water permit. The deadlines for the individual applications are the same as those given above for the NOIs for facilities transferred from the baseline permit. As appropriate, EPA will conduct ESA section 7 consultation when issuing such individual permits.

Regardless of the above conditions, EPA may require that a permittee apply for an individual NPDES permit on the basis of possible adverse effects on species or critical habitats. Where there are concerns that coverage for a particular discharger is not sufficiently protective of listed species, the Services (as well as any other interested parties) may petition EPA to require that the discharger obtain an individual NPDES permit and conduct an individual section 7 consultation as appropriate.

In addition, the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service (as well as any other interested parties) may petition EPA to require that a permittee obtain an individual NPDES permit. The permittee is also required to make the SWPPP, annual site compliance inspection report, or other information available upon request to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service Regional Director, or his/her authorized representative.

These mechanisms allow for the broadest and most efficient coverage for the permittee while still providing for the most efficient protection of endangered species. They significantly reduce the number of dischargers that must be considered individually and therefore allow the Agency and the Services to focus their resources on those discharges that are indeed likely to adversely affect listed species. Straightforward mechanisms such as these allow applicants more immediate access to permit coverage, and eliminates ''permit limbo'' for the greatest number of permitted discharges. At the same time it is more protective of endangered species because it allows both agencies to focus on the real problems, and thus, provide endangered species protection in a more expeditious manner.

3. North American Industry Classification System

EPA recognizes that a new North American Industry Classification System (NAICS) was recently adopted by the Office of Management and Budget (62 FR 17288, April 9, 1997). NAICS replaces the 1987 standard industrial classification (SIC) code system for the collection of statistical economic data. However, the use of the new system for nonstatistical purposes is optional. EPA considered the use of NAICS for the modified multi-sector permit, but elected to retain the 1987 SIC code system since the storm water regulations (40 CFR 122.26(b)(14)) reference the existing system and this system has generally proven to be adequate. EPA will address the new NAICS system in future rule making.

B. Special Conditions

The MSGP includes certain special conditions which are similar to corresponding conditions found in the baseline general permit. Except for the requirements for co-located facilities (Section III.B.3 below), permittees which have been operating under the baseline permit should generally be familiar with these requirements already.

1. Non-storm Water Discharges

Non-storm water discharges are generally not authorized by either the MSGP or the baseline permit. However, both permits do authorize a list of minor non-storm discharges such as fire hydrant flushings, potable water sources, routine external building washdown water, uncontaminated ground water and certain other

discharges, provided the discharges are identified in the SWPPP and appropriate pollution prevention measures are included for the discharges. In addition, permittees should also check the sector-specific SWPPP requirements in the MSGP for any additional requirements pertaining to non-storm water requirements.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

The MSGP and the baseline general permit include the same conditions pertaining to releases of reportable quantities of hazardous substances and oil. Such releases must be reported to the National Response Center and the permitting authority, and the SWPPP must be amended to prevent such discharges in the future.

3. Co-located Industrial Facilities

The MSGP includes a special condition pertaining to co-located facilities which was not included in the baseline general permit (see 60 FR 50813). If an industrial plant includes co-located facilities which fall into more than one sector of the MSGP, then the sector-specific SWPPP and monitoring requirements for both sectors apply to the plant. The baseline permit had required that when an industrial plant includes facilities which fall into more than one monitoring category, then the facility overall must comply with the monitoring requirements of both categories. However, the baseline permit did not include sector-specific BMP requirements. In addition, both the baseline permit and the MSGP provide that if monitoring for the same parameter is required for more than one category (or sector), then only one sample analysis is required for that parameter.

C. SWPPP Requirements

Both the baseline general permit and the MSGP require that permittees develop and implement SWPPPs to control the discharge of pollutants in storm water discharges. The SWPPPs required by the baseline permit included various generic BMPs for all categories of facilities covered by the permit. The following is a summary of the requirements:

- Pollution Prevention Team—the SWPPP must identify the individuals who are responsible for development and implementation of the SWPPP.
- Site Evaluation—the SWPPP must include a map of the facility and an assessment of the potential sources of storm water pollution at the facility.
- Generic BMPs including good housekeeping, preventive maintenance, spill prevention and response, employee training, record keeping, non-storm water discharge evaluation, erosion control measures and storm water management measures as appropriate.
- Comprehensive site inspection/ compliance evaluation.
- Special requirements for Emergency Planning and Community Right to Know Act (EPCRA) Section 313 facilities.

The baseline general permit required that covered facilities develop their SWPPPs no later than April 1, 1993, and come into compliance with their SWPPPs by October 1, 1993. The MSGP (as amended on February 9, 1996, 61 FR 5248) required that covered facilities develop and implement their SWPPPs by September 25, 1996. However, the MSGP also allows up to 3 years after permit finalization (i.e., no later than September 29, 1998) for completion of control measures identified in the SWPPP which involve construction.

The SWPPP which is required by the MSGP includes the same basic BMPs which are found in the baseline general permit and also sector-specific BMPs which are unique to the types of facilities in the various sectors. As such, the SWPPPs which have been developed by facilities which are currently operating under the baseline permit should already include the basic requirements of the MSGP. However, facilities which are transferred to the MSGP from the baseline permit will have to review the sector-specific BMP requirements of the MSGP and, as needed, upgrade their SWPPPs to comply with the requirements of the MSGP. Appendix B to this fact sheet summarizes the sector-specific requirements of the MSGP, including sector-specific SWPPP requirements, monitoring requirements (with a comparison to baseline permit requirements), numeric effluent limitations and inspection requirements. A more detailed description can be found in Section VIII of the September 29, 1995 fact sheet.

1. Deadline for SWPPP Revision and Implementation for Transferred Facilities

EPA has added a special deadline to the MSGP for SWPPP revision and implementation for transferred facilities (Part IV.A.10). The modified MSGP requires SWPPP modification and implementation within 180 days after the effective date of the MSGP modification. However, to implement control measures involving construction, transferred facilities have until October 1, 2000, which provides approximately the same amount of time for implementing constructed BMPs as the original MSGP. During the time period prior to SWPPP upgrade, the existing requirements of the baseline permit apply and are incorporated into the MSGP.

2. Special Requirements for Facilities Subject to EPCRA Section 313 Requirements

The MSGP includes the same special BMP requirements for facilities subject to the reporting requirements of Section 313 of the EPCRA as are found in the baseline general permit. Both permits require certain additional BMPs for facilities which are required to report for ''water priority chemicals.'' However, the list of such chemicals in the MSGP (Addendum F of the MSGP) differs somewhat from the list in the baseline permit due to changes in EPCRA reporting requirements which occurred subsequent to the issuance of the baseline permit. As such, facilities transferring to the MSGP should check the MSGP's list of ''water priorities chemicals'' to determine whether the special EPCRA requirements would apply.

The baseline permit also requires that the SWPPP for facilities subject to EPCRA Section 313 be certified by a professional engineer every 3 years. However, the MSGP only requires certification in accordance with the regular signatory requirements of the permit, i.e., by a responsible corporate official.

The MSGP also provides an exemption from the EPCRA Section 313 requirements for situations where an operator certifies that all water priority chemicals which are handled and/or stored on-site are only in gaseous or non-soluble liquid or solid forms (at atmospheric pressure and temperature). This exemption was not included in the baseline permit, and some facilities may be eligible for this exemption upon transfer from the baseline permit to the MSGP.

D. Monitoring and Reporting Requirements

Both the baseline general permit and the MSGP include analytical storm water monitoring requirements for certain categories of dischargers. However, the requirements differ somewhat with regard to the parameters for which sampling and analysis are required, and the industrial categories which are affected. In addition, the MSGP (Sector M) does not include the provision in the baseline permit for auto recyclers that monitoring only be required for facilities above a certain

size. The group application monitoring data did not support such an exemption.

Appendix B to this fact sheet summarizes the monitoring requirements of the MSGP, and the differences from the baseline permit. Additional information can be found in the fact sheets accompanying the issuance of the baseline permit (see 57 FR 41248) and the MSGP (see 60 FR 50822). Facilities which are transferred to the MSGP from the baseline permit are required to comply with the requirements of the MSGP. The key differences are discussed below:

1. Sampling Schedule

The MSGP differs from the baseline permit with regards to the schedule for analytical monitoring. The baseline permit had required monitoring for certain facilities once or twice each year during the term of the permit. The MSGP, however, requires monitoring quarterly, as appropriate, during years two and four of the term of the permit. For purposes of this monitoring, year two runs from October 1, 1996, through September 30, 1997. For transferred facilities and other dischargers obtaining MSGP coverage after September 30, 1997 (i.e., new dischargers, existing unpermitted dischargers and dischargers transitioning industrial storm water discharge permit coverage from an individually drafted NPDES permit to the MSGP), monitoring will only be required in year four (October 1, 1998, through September 30, 1999) since year two has already passed.

Also, as discussed below in Section III.E, both the baseline permit and the MSGP authorize certain discharges subject to numeric effluent limitations. Section III.E discusses the limits, and the sampling and reporting requirements.

2. Sample Type

The baseline general permit required grab and composite sampling for most parameters. As an alternative, the baseline permit also provided that one grab sample may be taken from a holding pond with a retention period greater than 24 hours. The requirements of the MSGP, however, have been simplified in that only a grab sample is required for all sectors except Sector S (air transportation) where grab and composite samples are required. Both the baseline permit and MSGP require that the grab sample be taken within the first 30 minutes of the discharge, unless this is impractical, in which case sampling is required within the first hour of discharge.

3. Quarterly Visual Examination Requirements of the MSGP

The MSGP requires quarterly visual examinations of storm water discharges for all sectors except Sector S, which covers air transportation. A full description of the requirements for the visual examinations is found in Section VI.E.8 of the fact sheet accompanying the issuance of the MSGP. Basically, the MSGP requires that grab samples of storm water discharges be taken and examined visually for the presence of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen or other obvious indicators of storm water pollution. The grab samples must be taken within the first 30 minutes after storm water discharges begin, or as soon as practicable, but not longer than 1 hour after discharges begin. The sampling must be conducted quarterly during the following time periods: January-March, April-June, July-September and October-December of each year. The reports summarizing these quarterly visual storm water examinations must be maintained on-site with the SWPPP.

The baseline general permit did not include requirements for visual examinations and facilities which are transferred to the MSGP will have to comply with these additional sampling requirements. For transferred facilities, these sampling requirements would begin in the first full calendar quarter of coverage of the MSGP. EPA believes that this type of sampling provides an inexpensive means for permittees to quickly assess the effectiveness of their SWPPPs and make any necessary modifications to address the results of the visual examinations.

4. Exemptions from Analytical Monitoring

Both the MSGP and the baseline general permit include certain provisions for exemptions from analytical monitoring. Both permits provide that facilities need not monitor if they certify that no significant materials or industrial activities are exposed to storm water. For the MSGP, however, the certification is on a pollutant-by-pollutant, outfall-by-outfall basis; i.e., if there are no exposed sources of a particular pollutant, then monitoring for that pollutant at that outfall does not need to be conducted. For the baseline permit, monitoring must be conducted for the entire suite of pollutants required by the permit if any industrial materials or activities are exposed.

The MSGP also includes an exemption from monitoring (again on a pollutant-by-pollutant basis) in the fourth year of the permit if the monitoring results of the second year are below certain benchmark values which are found below in Table 3:

TABLE 3.—PARAMETER BENCHMARK VALUES

Parameter name	Benchmark level	Source
Biochemical Oxygen Demand(5)	30 mg/L	4
Chemical Oxygen Demand	120 mg/L	5
Total Suspended Solids	100 mg/L	7
Oil and Grease	15 mg/L	8
Nitrate + Nitrite Nitrogen	0.68 mg/L	7
Total Phosphorus	2.0 mg/L	6
pH	6.0–9.0 s.u.	4
Acrylonitrile (c)	7.55 mg/L	2
Aluminum, Total (pH 6.5–9)	0.75 mg/L	1
Ammonia	19 mg/L	1
Antimony, Total	0.636 mg/L	9
Arsenic, Total (c)	0.16854 mg/L	9
Benzene	0.01 mg/L	10
Beryllium, Total (c)	0.13 mg/L	2
Butylbenzyl Phthalate	3 mg/L	3
Cadmium, Total (H)	0.0159 mg/L	9
Chloride	860 mg/L	1
Copper, Total (H)	0.0636 mg/L	9

TABLE 3.—PARAMETER BENCHMARK VALUES—Continued

Parameter name	Benchmark level	Source
Dimethyl Phthalate	1.0 mg/L	11
Ethylbenzene	3.1 mg/L	3
Fluoranthene	0.042 mg/L	3
Fluoride	1.8 mg/L	6
Iron, Total	1.0 mg/L	12
Lead, Total (H)	0.0816 mg/L	1
Manganese	1.0 mg/L	13
Mercury, Total	0.0024 mg/L	1
Nickel, Total (H)	1.417 mg/L	1
PCB–1016 (c)	0.000127 mg/L	9
PCB–1221 (c)	0.10 mg/L	10
PCB–1232 (c)	0.000318 mg/L	9
PCB–1242 (c)	0.00020 mg/L	10
PCB–1248 (c)	0.002544 mg/L	9
PCB–1254 (c)	0.10 mg/L	10
PCB–1260 (c)	0.000477 mg/L	9
Phenols, Total	1.0 mg/L	11
Pyrene (PAH,c)	0.01 mg/L	10
Selenium, Total (*)	0.2385 mg/L	9
Silver, Total (H)	0.0318 mg/L	9
Toluene	10.0 mg/L	3
Trichloroethylene (c)	0.0027 mg/L	3
Zinc, Total (H)	0.117 mg/L	1

Sources

1. ''EPA Recommended Ambient Water Quality Criteria.'' Acute Aquatic Life Freshwater
2. ''EPA Recommended Ambient Water Quality Criteria.'' LOEL Acute Freshwater
3. ''EPA Recommended Ambient Water Quality Criteria.'' Human Health Criteria for Consumption of Water and Organisms
4. Secondary Treatment Regulations (40 CFR 133)
5. Factor of 4 times BOD5 concentration—North Carolina benchmark
6. North Carolina storm water benchmark derived from NC Water Quality Standards
7. National Urban Runoff Program (NURP) median concentration
8. Median concentration of Storm Water Effluent Limitation Guideline (40 CFR Part 419)
9. Minimum Level (ML) based upon highest Method Detection Limit (MDL) times a factor of 3.18
10. Laboratory derived Minimum Level (ML)
11. Discharge limitations and compliance data
12. ''EPA Recommended Ambient Water Quality Criteria.'' Chronic Aquatic Life Freshwater
13. Colorado—Chronic Aquatic Life Freshwater—Water Quality Criteria

Notes

(*) Limit established for oil and gas exploration and production facilities only.
(c) carcinogen
(H) hardness dependent
(PAH) Polynuclear Aromatic Hydrocarbon

Assumptions

Receiving water temperature—20 C
Receiving water pH—7.8
Receiving water hardness CaCO3 100 mg/L
Receiving water salinity 20 g/kg
Acute to Chronic Ratio (ACR)—10

Note that the benchmark value for total mercury listed above is correctly listed as 0.0024 mg/L. The benchmark value for total mercury in the original publication of the MSGP (60 FR 50826) had been incorrectly listed as 10.0024 mg/L. In addition, as further discussed in EPA's notice of technical correction of February 9, 1996 (61 FR 5248), the benchmark for zinc is correctly listed above as 0.117 mg/l rather than 0.065 mg/l which was an error in the original MSGP.

EPA believes that monitoring results below these benchmarks indicate that a generally effective SWPPP is being implemented at a facility, and that further monitoring should not be required. The exemption also provides an incentive for facilities to implement an effective SWPPP which will reduce pollutant discharges.

The baseline permit required continued analytical monitoring for certain categories of facilities throughout the term of the permit regardless of sampling results. For facilities which are transferred to the MSGP from the baseline industrial permit, monitoring is not required in year four for particular pollutants if the average of the two most recent monitoring results conducted for the baseline permit are below the benchmarks. However, if monitoring was not conducted for the appropriate pollutants, then the exemption would not be available. In addition, the exemption would not be available if the industrial activities at a facility have changed to the extent that the most recent monitoring results do not reflect discharges from current activities.

It should also be pointed out that the monitoring exemption discussed above based on the absence of exposure at a facility is available in year 4 of the MSGP regardless of past monitoring results. This exemption is available for facilities already covered by the MSGP and those to be transferred to the MSGP from the baseline permit. EPA believes that the exemption provides an incentive for facilities to eliminate exposure of materials and activities to storm water, thereby reducing pollutant discharges. We should also point out, however, that the discharges discussed in Section III.E below which are subject to numeric effluent limitations are not eligible for any of the exemptions from monitoring.

5. Reporting Requirements

The baseline permit required annual reporting of analytical monitoring results for those facilities subject to semi-annual monitoring. Facilities which are subject to annual monitoring were required to retain the results on-site. The MSGP requires that monitoring results be submitted to the permitting authority at the end of each year in which sampling is required (postmarked by March 31 of the year following the monitoring period, e.g., by March 31, 2000, for the year four monitoring period). The results of the quarterly visual examinations need not be

submitted, but must be retained on-site in the SWPPP.

E. Numeric Effluent Limitations

The MSGP includes the same numeric effluent limitations for coal pile runoff as were found in the baseline general permit. These limits are: (1) maximum of 50 mg/L for total suspended solids (TSS) and a pH range of 6–9 standard units. Any untreated overflow from facilities designed, constructed and operated to treat the runoff associated with a 10-year, 24-hour rainfall event is not subject to the 50 mg/L limit for TSS. Dischargers previously covered under the baseline general permit must be compliant with this limitation upon submittal of the NOI for coverage under MSGP.

The baseline general permit did not authorize storm water discharges subject to numeric effluent limitation guidelines (ELGs). The MSGP, however, does authorize certain storm water discharges subject to ELGs including the coal pile runoff at steam electric power plants, and for the following categories: Phosphate fertilizer manufacturing (40 CFR part 418), asphalt paving and roofing emulsions (40 CFR part 443), and cement manufacturing materials storage pile runoff (40 CFR part 411). In addition, the modified MSGP authorizes mine dewatering discharges from construction sand and gravel, industrial sand, and crushed stone facilities (40 CFR Part 436) in EPA Regions I, II, VI, X and Arizona. These numeric effluent limitations can be found in Appendix B to this fact sheet.

The baseline permit required semi-annual monitoring (with annual reporting) of coal pile runoff. However, the MSGP only requires annual monitoring for all of the discharges subject to numeric effluent limits (except mine dewatering discharges in Sector J where the monitoring frequency is quarterly). The annual monitoring periods run from October 1 through September 30 of each year, and reporting is required by November 30 of each year. The quarterly monitoring results are due no later than the last day of the month following the collection of the sample.

F. Miscellaneous Permitting Actions

In today's notice, EPA has also made the following limited specific changes to the MSGP as published on September 29, 1995 (60 FR 50804): (1) authorization of mine dewatering discharges from construction sand and gravel, industrial sand, and crushed stone mines in EPA Regions I, II and X; (2) inclusion in Sector A of the MSGP of the effluent limitation guideline in 40 CFR Part 429 Subpart I for discharges resulting from spray down of lumber and wood products in storage yards (wet decking); (3) clarification that Sectors X and AA authorize discharges from all facilities in major SIC groups 27 and 34 respectively; and (4) addition of new sector (Sector AD) to the MSGP to authorize discharges from Phase I facilities which may not fall into one of the sectors of the modified MSGP, and selected Phase II discharges which are designated for permitting in accordance with 40 CFR 122.26(g)(1)(i). These are discussed below.

1. Coverage of Mine Dewatering Discharges in EPA Regions I, II and X

Sector J of the original MSGP authorized mine dewatering discharges composed entirely of storm water or ground water seepage from construction sand and gravel, industrial sand and crushed stone mines in EPA Region VI and Arizona. These discharges are subject to effluent limitations guidelines found at 40 CFR Part 436, Subparts B, C and D. An individual permit or an alternate general permit was needed for these types of discharges in areas other than Region VI and Arizona. For increased permitting flexibility, today's modification extends this authorization to facilities in the areas of EPA Regions I, II and X where EPA is the NPDES regulating authority (see ''Areas of Coverage'' at the beginning of the Final Permit Modifications section of this notice to identify specific areas in these Regions where the modifications apply). This action avoids the need to issue individual NPDES permits, or an alternate general permit, for discharges in these areas. As discussed in the Response to Public Comments found in Appendix A of this Fact Sheet, today's final action includes EPA Region I which increased the affected area beyond that which was proposed by the Agency on July 11, 1997.

2. Discharges Resulting From Spray Down of Lumber and Wood Products in Storage Yards in Sector A

The MSGP authorizes non-storm water discharges resulting from the spray down of lumber and wood products in storage yards (wet decking), provided that no chemical additives are used in the spray and no chemicals are applied to the wood during storage. The MSGP, however, inadvertently omitted the numerical effluent limitation guideline in 40 CFR part 429, Subpart I which applies to such discharges. Accordingly, EPA has modified the MSGP to incorporate the applicable effluent limitation guideline and appropriate monitoring requirements for clarification.

The numerical limits which apply to these non-storm water discharges are: there shall be no debris discharged and the pH shall range from 6.0 to 9.0. The term ''debris'' refers to woody material such as bark, twigs, branches, heartwood or sapwood that does not pass through a 2.54 cm (1.0 inch) diameter round opening and is present in the discharge from a wet storage facility. EPA has included these effluent limitations and also a requirement for annual monitoring of the discharges.

3. Clarification of Coverage in Sectors X and AA of the MSGP

Sectors X and AA of the MSGP contain narrative descriptions of industrial activities, SIC code major group listings and specific four digit SIC codes listings for which coverage would be available. These three methods of describing the types of industry allowed coverage under these two sectors has proven to be confusing and EPA is now clarifying the coverage of these two sectors in this modification.

Sector X was intended by EPA to cover all industry in major SIC group 27 (printing, publishing and allied industries), and Sector AA was intended to cover all industry in major SIC group 34. EPA has been accepting NOIs from all facilities within these two major SIC groups, regardless of the four digit SIC code listings, which mistakenly, have been interpreted to be more restrictive. Through this clarification, EPA wants to make it clear that all qualifying industries in these two major groups can make use of the MSGP.

4. Addition of Sector AD to the MSGP

EPA has also added another sector to the MSGP (Sector AD) to cover discharges from Phase I facilities which may not fall into one of the sectors of the final modified MSGP, and to provide a readily available means for covering many of the Phase II storm water facilities which are designated for permitting prior to the permit application deadline for Phase II sources of August 7, 2001. As discussed earlier, EPA has modified the MSGP to include all facilities which were authorized under the baseline general permit, but excluded from the MSGP. Although EPA believes that all such previously excluded facilities have been identified and included in the final modified MSGP, Sector AD has been added to cover any inadvertent omissions.

For Phase II storm water sources, NPDES regulations at 40 CFR 122.26(g)(1)(i) provide that permit applications may be required within 180

days of notice for discharges which contribute to a violation of a water quality standard, or are determined to be significant sources of pollutants. For discharges other than municipal separate storm sewer discharges, 40 CFR 122.26(g)(2) provides that individual permit applications may be required in accordance with 40 CFR 122.26(c)(1), or an NOI under a general permit may be required. Sector AD provides a means through which general permit coverage may be obtained for many designated Phase II facilities and as such, facilitates implementation of the requirements of 40 CFR 122.26(g)(1)(i). However, for cases where Sector AD is inappropriate, individual permits or an alternate general permit are required. In addition, Part I.B.3.f of the MSGP does not authorize coverage for discharges which may be contributing to a violation of a water quality standard. As such, for discharges permitted under 40 CFR 122.26(g)(1)(i), Sector AD could only be used for discharges which are determined to be a significant source of pollutants.

Sector AD is added in Part XI.AD of the MSGP. The SWPPP requirements for this sector are the same as in the baseline general permit to ensure flexibility given the broad universe of potential types of facilities which may be covered. Also, no analytical monitoring requirements are included for the new sector; however, quarterly visual examinations are required as in most other sectors. In addition, the requirements common to all sectors of the MSGP which are set forth in Parts I–X and XII of the MSGP also apply to Sector AD.

5. Modification of Inspection Requirements for Inactive Oil and Gas Extraction Facilities in Sector I

As discussed further in the Summary of Responses to Public Comments, EPA has modified the inspection requirements for inactive oil and gas extraction facilities which are remotely located and unstaffed (within major SIC group 13) covered by Sector I. The modification provides that only annual inspections are required (rather than quarterly or semi-annual inspections) for inactive facilities which are remotely located and unstaffed. This modification is being made in response to concerns regarding the practicality of quarterly or semi-annual inspections for inactive, unstaffed facilities, particularly those in remote areas. Sector J (for mineral mining and processing) also requires only annual inspections for inactive facilities and EPA believes that this requirement is appropriate for inactive oil and gas extraction facilities which are remotely located and unstaffed as well.

G. Response to National Mining Association Concerning Sector G of the MSGP

As discussed above, the MSGP authorizes selected storm water discharges subject to ELGs. However, Sector G for the ore mining and dressing industry is not among the sectors for which the MSGP authorizes such discharges. In section VIII.G of the fact sheet for the MSGP, EPA provided a table (Table G–4) regarding the applicability of ELGs to storm water discharges from ore mining operations. On October 10, 1995, the National Mining Association (NMA) challenged the interpretations of the ELGs contained in Table G–4, particularly the interpretation of the term ''mine drainage'' to include runoff from waste rock and overburden represented by the Table (*National Mining Association* v. *EPA*, No. 95–3519 (8th Cir.)).

On October 22, 1997 (62 FR 54950), EPA proposed a clarification to the interpretation in Table G–4 and modification of Sector G of the MSGP in response to the challenge from the NMA. On August 7, 1998, EPA published final revisions to Sector G in the **Federal Register** which modified Table G–4 to only include those specific storm water discharges which are authorized by the MSGP and are not subject to ELGs. Monitoring requirements for storm water discharges from waste rock and overburden piles were also included in the final revisions.

H. Regional Offices

Notice of Intent Address. Notices of Intent to be authorized to discharge under the MSGP should be sent to: Storm Water Notice of Intent (4203), USEPA, 401 M Street, S.W., Washington, DC 20460.

For further information, please call the appropriate EPA Regional storm water contacts listed below:

- ME, MA, NH, Indian country in CT, MA, ME, RI, and Federal Facilities in VT

  EPA Region I, Office of Ecosystem Protection, JFK Federal Building (CMU), Boston, MA 02203, Contact: Thelma Hamilton (617) 565–3569
- PR

  U.S. Environmental Protection Agency, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce de Leon Avenue, Suite 417 Santurce, Puerto Rico 00907–4127 Contact: Sergio Bosques (787) 729–6951
- DC and Federal Facilities in DE

  EPA Region III, Water Protection Division, (3WP13), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107, Contact: Cheryl Atkinson (215) 566–3392
- FL and Indian country in FL

  EPA Region IV, Water Management Division, Surface Water Permits Section (SWPFB), 61 Forsyth Street, SW, Atlanta, GA 30303–3104, Contact: Floyd Wellborn (404) 562–9296
- NM and TX; Indian country in LA, OK, TX and NM (Except Navajo and Ute Mountain Reservation Lands); and oil and gas exploration and production related industries, and pipeline operations (which under State law are regulated by the Oklahoma Corporation Commission and not the Oklahoma Department of Environmental Quality).

  EPA Region VI, NPDES Permits Section (6WQ–PP), 1445 Ross Avenue, Dallas, TX 75202–2733, Contact: Brian Burgess (214) 665–7534
- AZ, American Samoa, Commonwealth of Northern Mariana Islands, Johnston Atoll, Guam, Midway Island and Wake Island; all Indian country in AZ, CA, and NV; those portions of the Duck Valley, Fort McDermitt and Goshute Reservations that are outside NV; those portions of the Navajo Reservation that are outside AZ.

  EPA Region IX, Water Management Division, (WTR–5), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, Contact: Eugene Bromley (415) 744–1906
- AK and ID; Indian country in AK, ID (except the Duck Valley Reservation), OR (except the Fort McDermitt Reservation), and WA; and Federal facilities in WA

  EPA Region X, Office of Water (OW–130), Storm Water Staff, 1200 Sixth Avenue, Seattle, WA 98101, Contact: Joe Wallace (206) 553–8399

IV. Cost Estimates

Cost estimates for the MSGP were included with the final fact sheet accompanying the issuance of the MSGP on September 29, 1995 and are not being repeated here. However, costs for the facilities being transferred to the MSGP from the baseline permit are expected to be lower than for those initially applying for coverage under the MSGP since the transferred facilities will already have responded to some of the requirements of the MSGP.

V. Economic Impact (Executive Order 12866)

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this modified general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

VI. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, e.g., UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the final modifications will not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the final modifications will not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The final modifications also will not uniquely affect small governments because compliance with the final permit conditions affects small governments in the same manner as any other entities seeking coverage under the modified permit.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the final permitting actions under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the MSGP have already been approved in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency has determined that the permit modification being published today is not subject to the Regulatory Flexibility Act (''RFA''). By its terms, the RFA only applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (''APA'') or any other statute. Today's permit modification is not subject to notice and comment requirements under the APA or any other statute because the APA defines ''rules'' in a manner that excludes permits. See APA section 551 (4), (6), and (8). The APA distinguishes between agency action that is a ''rule'' and agency action that is an ''order.'' An order is any final agency disposition, including agency action in issuing licenses or permits, in a matter other than rulemaking. Adjudication is the agency process for formulating an order and rulemaking the process for formulating a rule. The requirements of APA section 553 apply only to the issuance of ''rules.'' Informal adjudications, which typically include agency process for issuing permits, are not rules and are not subject to the rulemaking requirements of section 553(b). In the Agency's view, the issuance by EPA of a license (in the form of an NPDES general permit) that may apply to a large number of different dischargers does not necessarily convert the permit issuance of the general permit from an adjudication to rulemaking. The Agency has explained in further detail its reasons for concluding that issuance of a general NPDES permit is not subject to the RFA at 63 FR 7898 (February 17, 1998).

Today's final permit modification actions will provide small entities the opportunity to obtain storm water permit coverage under the MSGP, which was originally developed based on the group application process. The group application information submitted to EPA provided a basis for the development of storm water permit conditions tailored specifically for each industry. Today's action expands applicability provisions for some sectors so that permittees previously authorized under the expired Baseline Industrial General Permit may be eligible for authorization. Today's modifications also create a ''default'' category for permittees covered by the expired baseline permit where there is no applicable or relevant industrial sector category in the MSGP. The MSGP requirements were designed to minimize significant administrative and economic impacts on small entities. Transfer of permit coverage from the baseline permit to the MSGP should not have a significant impact on industry in general. Moreover, the MSGP reduces a significant burden on regulated sources of applying for individual permits.

Part IX—Official Signatures

Accordingly, I hereby find consistent with the provisions of the Regulatory

Flexibility Act, that these final permit modifications will not have a significant impact on a substantial number of small entities. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 1, 1998.

John DeVillars,

Regional Administrator, Region 1.

Dated: August 26, 1998.

Jeanne M. Fox,

Regional Administrator, Region 2.

Dated: August 6, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region 3.

Dated: August 4, 1998.

Robert F. McGhee,

Acting Regional Administrator, Region 4.

Dated: July 20, 1998.

Gregg A. Cooke,

Regional Administrator, Region 6.

Dated: August 17, 1998.

Laura Yoshii,

Acting Regional Administrator, Region 9.

Dated: July 26, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

X. Notice of Final MSGP for American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI)

The draft MSGP was proposed by EPA on November 19, 1993 (58 FR 61146), and American Samoa and the CNMI were proposed to be included among the areas of coverage of the MSGP. However, at the time of issuance of the final MSGP for most areas (September 29, 1995), the American Samoa EPA and the Division of Environmental Quality of CNMI had not completed their review of the MSGP for certification purposes pursuant to Section 401 of the CWA. As such, EPA did not issue the MSGP for American Samoa and CNMI at that time.

On September 5, 1997 and October 6, 1997, respectively, the CNMI Division of Environmental Quality and the American Samoa EPA provided their 401 certifications for the MSGP (including today's modifications). The certifications also include certain special conditions necessary to ensure compliance with the CWA. Today, EPA is providing notice of the issuance of the final MSGP for American Samoa and CNMI, including the special conditions which were required. The area of coverage of the MSGP is being revised today to include American Samoa and CNMI among the areas for which discharges may be authorized. The other modifications of the MSGP which are discussed elsewhere in this fact sheet also apply to the MSGP issued for American Samoa and CNMI. The 401 certification conditions required by American Samoa and CNMI are found in Part XII of today's revised MSGP.

The MSGP includes industry-specific sections that describe the storm water pollution prevention plan requirements, numeric effluent limitations and monitoring requirements for the specific industries. These industry-specific sections are contained in Part XI of the MSGP and are described in Part VIII of the fact sheet published on September 29, 1995. There are also a number of permit requirements that apply to all industries which are found elsewhere in the MSGP and described in the fact sheet.

Today's notice incorporates by reference the permit terms and conditions set forth at 60 FR 51108–51255 published on September 29, 1995, and also incorporates by reference the technical corrections of February 9, 1996 (61 FR 5251–5254) and February 20, 1996 (61 FR 6412). These requirements may be found in Parts I through XI of the permit.

A. Contacts

Notices of Intent (NOIs) to be covered under the MSGP and Notices of Termination (NOTs) to terminate coverage under the MSGP must be sent to the Storm Water Notice of Intent Processing Center (see address below). The complete administrative record for the MSGP is available through the Water Docket MC–4101, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

Notice of Intent Address. Notices of Intent to be authorized to discharge under the MSGP should be sent to: NOI/NOT Processing Center (4203), 401 M Street SW, Washington, D.C. 20460.

Address for Other Submittals. Other submittals of information required under the MSGP for American Samoa and CNMI should be sent to EPA, Region 9, Water Division (WTR–7), 75 Hawthorne Street, San Francisco, CA 94105.

B. 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters, shall be granted until the state in which the discharge originates certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the CWA.

For American Samoa, the following special conditions were included with its 401 certification:

1. NOIs must be sent to the American Samoa EPA simultaneously with submittal to EPA.

2. Storm water pollution prevention plans (SWPPPs) must be submitted to the American Samoa EPA for review and approval. (Although the American Samoa EPA did not specify a deadline for submittal, it is presumed that submittal is required as soon as the SWPPP is completed.)

For CNMI, the following special conditions were included with its 401 certification:

1. NOIs submitted to the CNMI DEQ must be postmarked 7 days prior to any storm water discharges.

2. The NOI which is submitted to CNMI must be accompanied by a letter from the CNMI DEQ approving the SWPPP.

3. SWPPPs required by the permit must be submitted to the CNMI DEQ for review and approval along with applicable fees associated with a 401 Water Quality Certification prior to submittal of an NOI to EPA and the CNMI DEQ.

4. NOIs must be submitted to the CNMI DEQ and EPA Region 9 as well as the regular NOI address in Washington, D.C.

The 401 certification requirements for American Samoa and CNMI are added to Part XII of the MSGP in the section for EPA Region 9 requirements.

C. Deadlines

NOI Submittal. NOIs for facilities in CNMI must be submitted no later than 90 days after today's date which is the effective date of the permit. This is consistent with the time frame for NOI submittal of the original MSGP issued on September 29, 1995. Although the NOI deadline of the original MSGP was extended 90 additional days, EPA does not believe this should be necessary in CNMI given the relatively small number of facilities in CNMI. A special condition was added to the MSGP (Part II.A.11) to clarify the deadline for NOI submittal for CNMI since the baseline general permit was never issued for CNMI. Permittees in CNMI will be requesting initial permit coverage under the MSGP rather than transferring from the baseline permit to the MSGP.

Facilities in American Samoa transferring to the MSGP from the baseline permit will also have 90 days to request coverage under the MSGP, which is the same amount of time given to any other permittees transferring to the MSGP.

SWPPP Preparation and Compliance. For facilities in CNMI, preparation and compliance with SWPPPs must be completed no later than 270 days after

the date of today's MSGP issuance. This provides the same amount of time that was provided in the original MSGP of September 29, 1995. However, for BMPs involving construction, the deadline is October 1, 2000, which provides roughly the same amount of time as provided by the original MSGP.

The expiration date for the MSGP for American Samoa and CNMI has been set at October 1, 2000, which is the same expiration date for areas covered by the September 29, 1995 MSGP. Although this results in a permit term somewhat less than the usual five years, alignment of the expiration dates will facilitate permit reissuance.

D. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in the final MSGP for American Samoa and CNMI under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. The information collection requirements in today's final notice for American Samoa and CNMI have already been approved by the Office of Management and Budget in previous submissions made for the NPDES permit program under the provisions of the CWA.

E. Considerations Under Other Federal Laws

For the MSGP issued for American Samoa and CNMI by today's notice, EPA is required to conduct and certify certain analyses under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Unfunded Mandates Reform Act, Pub. L. No. 104–4. By today's action, EPA adopts, incorporates, and certifies the relevant findings under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act made in the September 29, 1995 MSGP (and elsewhere in this fact sheet for today's modifications of the MSGP) for the purposes of the MSGP issued for American Samoa and CNMI.

F. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permit will provide any small entity the opportunity to obtain storm water permit coverage as a result of the group application process. Group applications provided small entities a mechanism to reduce their permit application burden by grouping together with other industrial facilities and submitting a common permit application with reduced monitoring requirements and shared costs. The group application information submitted to EPA provided a basis for the development of storm water permit conditions tailored specifically for each industry. The permit requirements have been designed to minimize significant administrative and economic impacts on small entities and should not have a significant impact on industry in general. Moreover, the permit reduces a significant burden on regulated sources of applying for individual permits.

Accordingly, I hereby certify consistent with 5 U.S.C. 605(b) that this permit will not have a significant impact on a substantial number of small entities.

Dated: July 18, 1998.

Laura Yoshii,

Acting Regional Administrator, Region 9.

Appendix A—Summary of Responses To Public Comments on the July 11, 1997, Proposal To Modify the MSGP and Terminate the Baseline Industrial General Permit

The following discussion is a summary of the major issues identified by EPA that were raised during the public comment period regarding the proposal to modify the MSGP and terminate the Baseline Industrial General Permit, along with EPA's response to each major issue. This summary aggregates comments by similarity of the issues. A comprehensive discussion of each comment that was raised is provided in a separate document which is maintained by EPA as a part of the record for these permitting actions.

Notice of Intent Comments

Several comments were received concerning the need for EPA to streamline the permit process and reduce the administrative burden on the regulated community for permittees that chose to remain under the Baseline Industrial General Permit (BGP) after its expiration date. Comments included the following: The procedure required by the BGP for permittees to follow to obtain extended coverage beyond the permit's expiration date was confusing and cumbersome (i.e., submission of a NOI between August 1, 1997, and 2 days prior to the expiration date); the submission of an NOI for extended coverage under the BGP, followed by submission of another NOI at a later date to transition coverage to the MSGP and submission of a Notice of Termination (NOT) to end BGP coverage would be especially burdensome on companies with multiple facilities; and, the timing of the MSGP permit modification with the changeover from the expiring BGP to the MSGP was arbitrary and therefore burdensome on the regulated community.

In response, EPA acknowledges that the permit process could have been improved but doing so would have required that EPA draft, propose and finalize a modification to Part VII.B of the BGP (i.e., Part VII.B of the BGP requires that permittees submit a second NOI during the period of August 1, 1997, through September 29, 1997, if they wish to maintain permit coverage beyond the expiration date of October 1, 1997). This process may not have been completed in a timely manner (i.e., before the permit's expiration date) and would have diverted limited Agency resources from the more important task of modifying the MSGP. Also, the submission of a NOT to end BGP coverage when a permittee submits its NOI for transition to the MSGP is not a permit requirement (see Part IX.A of the BGP), but does assist EPA with its database management activities. Furthermore, under Part VII.B of the MSGP (Continuation of the Expired Permit; 60 FR 51120), permittees are not required to submit a second NOI to remain covered beyond the expiration date of that permit. Another NOI would only have to be submitted to obtain coverage under a new or alternate general permit.

One commenter suggested that EPA automatically extend permit coverage for BGP permittees under the authority of the Administrative Procedure Act (APA). Another commenter suggested that EPA provide permittees with a ''post card'' type notice to submit instead of another NOI to facilitate the process. Yet another commenter suggested that EPA consider BGP permittees automatically extended after the expiration date unless they specifically indicate an intention to terminate permit coverage, or that the Agency will not take enforcement action against any permittee that fails to submit a NOI to extend permit coverage.

In response, EPA notes that Part VII.B of the BGP requires that permittees submit a second NOI during the period of August 1, 1997, through September 29, 1997, if they wish to maintain permit coverage beyond the expiration date of October 1, 1997. Development and distribution of a ''post card'' type notice for BGP permittees to submit in lieu of a NOI would have conflicted with this permit requirement. Furthermore, the NOI is an official

Agency form approved by the US Office of Management and Budget and is required for storm water permittee or applicant use where directed by permit conditions. To change these permit requirements and allow automatic extensions or use of ''post card'' type notices as the commenters suggested would have required that EPA draft, propose and finalize a modification to the BGP. As mentioned above, this process may not have been completed in a timely manner (i.e., before the permit's expiration date) and would have diverted limited Agency resources from the more important task of modifying the MSGP. To assist permittees with understanding their options in view of the pending expiration of the permit, EPA sent a letter to all BGP permittees in August 1997 which described in detail their permitting options (i.e., submission of a NOI to either transition to the MSGP permit or remain covered under the BGP past its expiration date). Finally, failure by a BGP permittee to submit a NOI for extended coverage would be a permit violation and may subject the permittee to potential enforcement action.

Similar comments were received concerning the need for BGP permittees to submit another NOI to transfer coverage to the MSGP, and that EPA should do this automatically to reduce the administrative burden on both permittees and the Agency. In response, EPA notes that according to NPDES permit regulations found at 40 CFR 122.28(b)(2), dischargers seeking coverage under a general permit such as the MSGP must submit a Notice of Intent to EPA. Further, though the BGP and the MSGP are similar, they are separate NPDES permits with specific eligibility requirements and application procedures which must be followed when applying for permit coverage. Applying for and receiving permit coverage under one does not mean that a permittee has also automatically received coverage under the other. This is especially evident since there are specific questions and certification provisions concerning the Endangered Species Act and the National Historic Preservation Act on the current NOI form (OMB No. 2040–0086) which MSGP applicants must respond to but not BGP applicants.

Several commenters were confused whether a statement in the modification proposal (62 FR 37455) that BGP permittees were eligible for voluntary transferral to the MSGP also applied to ''orphan'' facilities (i.e., BGP permittees who, prior to today's final MSGP permit modification, were not eligible for transfer to the MSGP). In response, EPA is providing clarification that the option to voluntarily transfer to the MSGP from the BGP applied only to non-orphan facilities since orphan facilities were not eligible for transfer to the MSGP at the time of the publication of the proposed modifications (July 11, 1997) and only became eligible through today's final publication of the modifications to the MSGP.

One commenter agreed with EPA's position to not modify the MSGP to require the use of the new North American Industry Classification System (NAICS) in lieu of the 1987 Standard Industrial Classification (SIC) Manual which has been used by the MSGP since its original publication in 1995. EPA agrees with the commenter's assertion that switching to the new NAICS would create unnecessary confusion in the MSGP's regulated community. Further, EPA believes that a revision to the definition of ''storm water associated with industrial activity'' should be completed before any such permit modification is undertaken since the definition, which is the first step in determining whether a facility needs to apply for permit coverage, is currently based on the SIC manual and not on the NAICS.

Several commenters suggested that EPA introduce (propose) the new expanded NOI form developed by EPA in conjunction with the Urban Wet Weather Flows Federal Advisory Committee for use by industrial storm water dischargers. The commenters stated that the expanded NOI form would require facilities to not only identify the receiving water body as the current NOI form does, but also quantify storm water flows thereby improving applicants' awareness of the actual effect their storm water discharges have on water bodies. The expanded NOI form would also require permittees to identify their storm water management practices, something that is not required by the current NOI form. The commenters stated that this would improve the applicants' awareness of storm water pollution prevention as well as the myriad of practices which can be used to decrease the discharge of pollutants. Furthermore, the expanded NOI form would provide information which EPA and State agencies could use to base resource allocations on by focusing on potential problem facilities. Finally, the expanded form would vastly increase citizen access to meaningful information, thereby improving credibility of the program. The commenters argued that EPA should employ these valuable tools in the permit modification rather than delaying the benefits that the expanded NOI form would provide. In response, EPA concurs with the commenters suggestions and will be proposing the expanded NOI form for public comment in the near future. However, the expanded NOI form has not yet been approved by the Office of Management and Budget and is not ready for use in today's MSGP modification.

Several commenters stated that the certification language contained on the NOI should include a provision that the person signing the form should not only certify ''To the best of my knowledge * * *'', but should also make a reasonable investigation of the facts used to complete the form. They also stated that ignorance should not be a shield (from potential liability). In response, EPA believes that the commenters are referring to Box 2 of the current NOI form which, as stated in the box, is for MSGP applicants only. However, the provisions contained in Box 1 apply to all people who sign and date the NOI. EPA believes that the certification statement contained in Box 1 sufficiently addresses the commenters' concerns: ''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.'' This language comes from NPDES regulations at 40 CFR 122.22. Consequently, no change to the current NOI form will be proposed. Also, EPA intends to use the same language when proposing the expanded NOI form in the near future.

Deadlines for Submitting Notices of Intent (NOIs) and for SWPPP Compliance

The proposal of July 11, 1997, provided 30 days after the effective date of the MSGP modification for NOI submittal for facilities transferring to the MSGP from the baseline industrial permit. A 90 day period after the effective date of the modification was proposed for upgrading SWPPPs as necessary to comply with the provisions of the MSGP, and facilities requiring BMP construction would be allowed up to September 29, 1998. Several commenters argued that all three of these time periods were too short, and

various extensions and justifications for the extensions were submitted. Conversely, one commenter stated that the September 29, 1998, deadline for transitioning facilities to complete BMP construction was unnecessary since any BMP construction required under the Baseline Industrial General Permit, the predecessor to the MSGP, supposedly would have already been completed. The commenter requested that this time frame be shortened to 90 days from the effective date of the permit.

Commenters had argued that 30 days for NOI submittal may be inadequate due to the possible need to coordinate with other agencies on matters such as the Endangered Species Act certification. A commenter also noted that SWPPPs are sometimes prepared by consultants and that adequate time is needed to hire a consultant and modify the SWPPP. Other commenters also argued that more than 90 days would be required due to the complexity of the requirements of the MSGP. In addition, for BMPs involving construction, the proposed deadline of September 29, 1998, would be inadequate due to factors such as the time necessary for the planning and budgeting for the projects, as well as the construction itself.

In response to these concerns, EPA has extended the deadlines are follows: NOIs would be due 90 days after the effective date of the MSGP modification; SWPPP revisions not involving construction would be due 180 days after the effective date of the MSGP modification; and SWPPP revisions which involve construction would be required no later than October 1, 2000, which is the expiration date of the MSGP. EPA believes that the revised deadlines are appropriate and generally in line with the recommendations of the commenters.

A commenter also noted that the proposed modification would require that permittees ''begin implementation'' of their revised SWPPPs by the required deadline. The commenter requested that EPA clarify that all requirements of the modified SWPPPs must be in place and in operation by the deadlines. In response, EPA believes that the words ''begin implementation'' clearly indicate that the actual implementation of any new BMPs in SWPPPs must commence (or be completed and in operation in the case of BMPs involving construction) by the appropriate deadlines. As such, no changes were made in response to this comment.

Other commenters expressed concern that the proposal of July 11, 1997, had not clarified that for facilities transferring to the MSGP prior to its modification, SWPPPs must be in compliance with the requirements of the MSGP at the time of NOI submittal. EPA agrees that such a clarification would have been helpful. However, this is a moot issue at this time since the MSGP has now been modified and hence no additional discussion of this matter is required.

Is a New NOI Required if Operations Change at a Facility?

A commenter raised the question, in connection with eligibility requirements of Sector AD of Part XI, if both a Notice of Termination (NOT) and a new Notice of Intent (NOI) would need to be submitted if conditions change at a facility covered by this sector such that the facility falls into another sector.

In response, in order to reduce the paperwork burden on permittees EPA does not require that updated NOIs be submitted for such changes. Updated information concerning the type of facility can be provided when the MSGP is reissued and the next NOI is submitted. The MSGP does, however, require that permittees update their SWPPPs in response to changes which occur at a facility. In addition, if changes occur at a facility such that the facility would fall into a different sector or an additional sector, the monitoring requirements of the other sector(s) would apply.

Must Permittees Submit Notices of Intent (NOIs) to Operators of Municipal Separate Storm Sewer Systems (MS4s)?

A commenter noted that the July 11, 1997, notice did not address the question of whether facilities must submit NOIs to the operator of a large or medium MS4 in addition to EPA. The commenter requested clarification of this issue.

Part II.D of the MSGP requires that facilities requesting coverage under the MSGP also submit a copy of the NOI to the operator of a large or medium MS4 if they discharge into the MS4. Part II.D of the MSGP is not affected by this permit modification. Therefore, copies of NOIs must be provided to large or medium MS4 operators.

Re-Publication of MSGP and Notice of Termination (NOT) Form

A commenter suggested that it may be necessary to re-published the entire MSGP so that facilities can more easily evaluate which sectors would apply to their facilities. Another commenter requested that the NOT form be published with the final permit modification in addition to the NOI form.

For the convenience of permittees, today's final modification includes the NOT form along with the NOI form. However, EPA has not re-published the entire MSGP due to its size and the fact that very little of the MSGP has actually been modified. The original MSGP can be found at 60 FR 50804. Copies can be obtained by calling the Region 2 and Region 6 storm water permitting hotline at 1–800–245–6510, or the EPA Office of Water Resources Center at 202–260–7786.

Extending the Public Comment Period

Several commenters requested that the comment period be extended given the potential effects on regulated facilities of the proposed transfer of facilities to the MSGP from the BGP. Another commenter contended that EPA had previously provided oral assurances that 60 day public comment periods would be provided for this type of action.

The July 11, 1997, notice consisted solely of the proposal to terminate the BGP and transfer facilities covered by that permit to the MSGP, along with a few minor modifications and clarifications of the MSGP. Given the limited complexity of the actual proposal, EPA believes that adequate time was provided for public comment. Further, it was necessary to limit the public comment period in consideration of the expiration of the BGP in September 1997. EPA regrets any inconvenience for permittees resulting from the fact that EPA was unable to provide a longer comment period such as 60 days.

Another commenter requested a workshop on the MSGP in Alaska. As part of the finalization of today's permitting actions, EPA is working to communicate the requirements of the MSGP to all affected industrial sectors. EPA believes that these efforts will address the concerns of the commenter regarding the MSGP.

Another commenter noted certain typographical errors in the proposal of July 11, 1997, and felt that the proposal had been rushed and not carefully thought out. In response, EPA has considered and responded to the comments received on the proposal and believes that the final permitting actions are appropriate. The typographical errors have also been corrected.

Requests for Public Hearings

Three commenters requested that additional public hearings be held on the proposals. A commenter argued that it was unfair that hearings were scheduled only in EPA Regions 6 and 9.

NPDES regulations at 40 CFR 124.12 require that a public hearing be held when a significant public interest exists in a proposed permitting action. Public hearings were held in Regions 6 and 9 in anticipation of such interest. However, since only three requests for additional hearings were received, EPA has decided not to hold additional hearings in other areas.

Reopening the Entire MSGP for Comment

Several commenters argued that the entire MSGP should be reopened for comment at this time. The commenters argued that facilities which were operating under the baseline industrial permit during the issuance process for the MSGP had no indication that they might be subject to the MSGP in the future and therefore did not comment on the MSGP.

EPA appreciates the concerns of the commenters in this regard, but for the reasons discussed below EPA nevertheless believes that the proposed permitting action is appropriate. First, a considerable amount of time was provided for comment on the original MSGP. The MSGP was proposed on November 19, 1993 (58 FR 61146), with a 90 day comment period. The MSGP was widely reviewed and commented upon by many commenters, including many representing the same types of industries which are now arguing for a reopening of the entire MSGP. Second, EPA does not believe that the commenters in their current review of the MSGP have identified any major new issues which were not raised during the original comment period. EPA believes that the vast majority of facilities covered by the baseline industrial permit will be able to transition to the MSGP without undue hardships. If the MSGP is inappropriate for a given facility, an individual permit may be requested.

EPA also does not agree with commenters who stated they had no indication the MSGP, or a permit such as the MSGP, would ever apply to them. EPA's long term permitting strategy for industrial storm water dischargers was promulgated on April 2, 1992 (57 FR 11394) well before the proposal of the MSGP. This long term strategy clearly indicated that EPA intended to issue industry-specific storm water permits, such as the MSGP, in the future. As such, EPA does not agree that facilities covered by the baseline industrial permit at the time of the proposed MSGP should not have taken an interest in the proposal.

EPA also points out that reopening the entire MSGP at this time could be a lengthy process which would not advance the objective of the Clean Water Act of expeditiously controlling pollutants in storm water discharges. In view of these factors, EPA has terminated the baseline industrial permit (with the limited exceptions discussed in the fact sheet) and as proposed is requiring facilities previously covered by the baseline industrial permit to transition to the MSGP.

Retaining the 1992 Baseline Industrial General Permit

Many commenters recommended that EPA reissue the 1992 baseline industrial permit and provided various reasons for this recommendation. For example, commenters believed that the baseline industrial permit has proven to be adequate for protection of the environment and that the MSGP is not needed. Other commenters objected to the complexities of the MSGP and the transition from the baseline industrial permit. Others were concerned about a perceived inflexibility of the MSGP (which is also discussed elsewhere in this Summary of Responses to Comments). Another commenter argued that the baseline industrial permit already requires compliance with the Best Available Control Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) requirements of the Clean Water Act and nothing more should be required. Still others asked whether EPA has any actual data which shows that the MSGP provides improved water quality benefits compared to the baseline industrial permit. Many commenters recommended that the 1992 baseline industrial permit should at least be reissued until the year 2000 when the MSGP expires.

EPA appreciates the concerns which have been raised but nevertheless believes that the July 11, 1997, proposal is a workable and reasonable permitting action given the present circumstances. For example, over 10,000 facilities are currently covered by the MSGP and EPA has no evidence that the permit is excessively complex or inflexible. The MSGP requires at least a consideration by permittees of various sector-specific Best Management Practices (BMPs) which have been identified for various types of industries. Such BMPs may or may not have been considered and incorporated into SWPPPs by permittees operating under the baseline industrial permit. Common sense indicates the MSGP should provide environmental benefits equal to or better than the baseline industrial permit. EPA also points out SWPPPs are technology-based requirements which are required by the BAT/BCT requirements of the Clean Water Act regardless of water quality considerations. However, EPA also does not believe that the requirements of the MSGP are such that only negligible additional reductions in pollutant discharges would result. In addition, while the baseline industrial permit represented a good first step in establishing BAT/BCT effluent limitations for industrial storm water discharges in 1992, EPA believes that the MSGP is an appropriate next step to further define BAT/BCT for specific industries in 1995. As noted elsewhere, EPA's intent to require industry-specific permits was announced on April 2, 1992 (57 FR 11394), in the long term permitting strategy for industries.

EPA also points out that the first storm water monitoring results from facilities currently operating under MSGP were not due until March 31, 1998. As such, EPA has little actual monitoring data from these facilities to compare with data from baseline industrial permit facilities. Nevertheless, as noted above, EPA believes that the improved SWPPPs developed pursuant to the MSGP should lead to water quality benefits.

Several other commenters supported the proposal to terminate the baseline industrial permit and transition facilities covered by it to the MSGP. An industrial representative agreed with EPA that the MSGP should be more effective in regulating industrial storm water discharges than the baseline industrial permit which only included generic BMP requirements. Another commenter noted that historic properties would receive increased protection via the NOI requirements of the MSGP, and supported the proposal on that basis. Today's final permitting actions differ only slightly from the proposals of July 11, 1997, and EPA believes that the final actions are consistent with the comments received from these commenters.

Expiration Date of the Baseline Industrial General Permit

Comments were received concerned the conflicting expiration dates listed in the baseline industrial permit. Part VII.B of the baseline industrial permit lists October 1, 1997, as the expiration date while the signature pages list September 9, 1997 (57 FR 41300). In accordance with NPDES regulations found at 40 CFR 122.46, an NPDES permit can be issued for no more that five years. (Note that permittees may obtain administrative extension of permit coverage beyond the expiration date

provided they have reapplied within the appropriate time frame.) Therefore, the correct expiration date is September 9, 1997, rather than October 1, 1997. In view of this inconsistency, EPA would use enforcement discretion and does not intend to initiate enforcement action for non-compliance with the CWA in instances where the discharger submits an NOI postmarked no later than 48 hours before October 1, 1997, to either obtain extended coverage under the baseline industrial permit or transition to the MSGP. The Agency conducted a mass-mailing in August 1997 to provide information concerning the expiration of the baseline industrial permit as well as the options available to permittees.

Another commenter requested that once the modifications are finalized, the Agency notify all permittees and inform them of precisely what the permit requirements are as well as the deadlines for all submittals and permit conditions. In response, the Agency is making the permit modifications widely known through publication in today's **Federal Register**. Due to the tremendous numbers of facilities affected by the modifications to the MSGP (i.e., all transitioning industrial baseline permittees), resources do not allow the Agency to provide individual attention to each permittee. The MSGP was drafted to be as self-implementing as possible in each industrial sector as well as the other parts which have general applicability to many or all permittees. To assist permittees with answering questions, EPA has several sources available by phone and over the Internet (please see Part III.H of the Fact Sheet for a list of EPA storm water contacts). Other sources include State and local government, trade associations and consultants.

Requesting an Individual Permit

EPA has proposed that facilities would be required to submit an individual permit application if they are ineligible for coverage under the MSGP due to Endangered Species Act or National Historic Preservation Act restrictions, or other conditions. Several commenters noted that the BGP would be terminated 30 days from the effective date of the MSGP modification. The commenters expressed concern that the individual permit would probably take longer than 30 days to issue and could leave the discharger without a permit.

Part II.A.9 of the proposed modified MSGP provided that the baseline permit would remain in effect until the individual permit was issued for the scenario described by the commenters. As such, EPA believes that the proposal addressed the commenters' concern and no changes were made in the final modified MSGP in response to this comment. It should also be noted that the individual permit application is due 90 days after the effective date of the final modified MSGP, rather than 30 days as had been proposed.

Issues Related to Requirements for Co-Located Facilities

Several commenters raised questions and concerns regarding the provisions in the MSGP regarding co-located facilities. The MSGP requires that when one facility includes operations which fall into more than one sector, the SWPPP and monitoring requirements of both sectors apply to the facility. It should also be noted, however, that if monitoring for the same parameter is required by two sectors, only one sample analysis is required for that parameter.

Concerns were expressed that some facilities may fall into many sectors and that it may be difficult to determine which sectors would apply. In response to this concern, EPA believes that the sectors are reasonably clear with regards to their applicability and permittees can successfully use their best judgment concerning which sectors apply. We also point out that over 10,000 facilities are currently covered by the MSGP and we have no evidence that this has been a significant problem.

Several questions were also raised specifically for airport operations and how the MSGP is intended to be implemented for airports. For example, clarification was requested regarding permitting requirements for tenant operations such as car rental agencies which may conduct on-site vehicle maintenance or fueling, but do not have a primary SIC code which is listed in the MSGP.

The implementation of the requirements of the MSGP for airports and their tenants was discussed in the final fact sheet and response to comments when the MSGP was originally issued in 1995. Further clarification is also provided below.

EPA would first like to clarify that storm water discharges from all facilities at an airport which engage in activities such as vehicle maintenance, painting, washing, fueling or de-icing need to be addressed. Tenants having an SIC code of 45xx (or otherwise listed at 40 CFR 122.26(b)(14)) must obtain NPDES permit coverage which could be accomplished by submittal of an NOI requesting MSGP coverage or by obtaining coverage under an individual permit. Tenants such as car rental agencies (SIC code 7514) with an SIC code (or narrative description) other than those listed at 40 CFR 122.26(b)(14) may obtain NPDES permit coverage. However, these tenants may also be addressed through agreements between the airport authority and the tenant with regards to appropriate storm water pollution control.

As discussed in the fact sheet and response to comments accompanying the 1995 MSGP, EPA encourages airport authorities and work cooperatively with tenants in implementing the requirements of the MSGP. For example, one SWPPP could be developed for the entire airport which addresses the pollution control activities to be implemented by the airport authority and all its tenants. Each individual tenant would only be responsible for implementing the portion of the SWPPP which applied to his or her specific facility.

In addition, the MSGP requires monitoring for an airport as a whole, and this could be accomplished most easily by permittees working together. Facilities which are not co-permittees under the MSGP, or which receive individual permits would have to comply with the monitoring and SWPPP requirements of the MSGP (or their individual storm water NPDES permit) on their own.

Another commenter noted that a facility such as a car hauler may be situated next to a car manufacturer. Concern was expressed that the car hauler might be required to comply with the SWPPP and monitoring requirements of the car manufacturer. In response, EPA points out that the requirements for the car manufacturer would not apply to the car hauler in such a situation since the car hauler would be a different operator. In addition, in response to another comment, in situations where one industrial plant includes separate operations which fall into more than one sector, the SWPPP and monitoring requirements for the individual co-located facilities do not necessarily have to be implemented throughout the entire facility. For example, in the case of a landfill at a wood treatment facility, the SWPPP requirements for the landfill would most likely be appropriate only for the landfill portion of the facility.

Exemption for Existing Facilities

A commenter recommended that only new facilities should be subject to storm water permitting requirements since they can incorporate appropriate controls into the design of the new facility. The commenter recommended that existing facilities should be exempt.

In response, EPA points out that Section 402(p) of the Clean Water Act,

as amended by the Water Quality Act of 1987, requires NPDES permits for new and existing storm water discharges associated with industrial activity. As such, EPA cannot waive storm water permit requirements for existing industrial facilities as recommended by the commenter.

Flexibility of the MSGP

Several commenters raised a number of concerns and questions related to the flexibility provided by the MSGP for different types of facilities. A commenter recommended that the MSGP only require cost-effective requirements and that the effects on small businesses be considered. In response, EPA believes that the requirements of the MSGP are reasonable and cost-effective. The MSGP was issued in 1995 after a thorough consideration of the information in the group applications concerning available storm water pollution controls at different types of industries, the costs of the controls, and the comments which were received on the proposed MSGP. EPA concluded that the effects on small businesses would not be significant, both for the original MSGP issuance and for today's modification (see 60 FR 51067 and Section VIII of the fact sheet accompanying today's modification). The commenter also recommended that the MSGP only require structural controls as a last resort and that non-structural controls should be the preferred means of pollutant control. With regard to this issue, EPA believes that the MSGP does provide flexibility to permittees in selecting an appropriate mix of structural and non-structural controls for their SWPPPs. Although numerous industry-specific BMPs are included in the MSGP, the language of the permit usually only requires that they be considered and included when appropriate as opposed to being absolute requirements. Furthermore, if non-structural controls by themselves adequately control pollutants in the discharges, then a SWPPP could consist solely of such controls.

Commenters also raised several specific concerns regarding the MSGP. One commenter expressed concern that the spill prevention and response requirements of SWPPPs could duplicate other existing requirements for spill prevention and response. In response, EPA points out that SWPPPs may include by reference spill prevention and response programs which have already been developed by a facility in accordance with another program. Another commenter recommended that only reportable spills and leaks be listed when developing a description of potential pollutant sources for a SWPPP. In response to this concern, EPA notes that spills and leaks involving less than reportable quantities may nevertheless degrade storm water quality. The MSGP requires a listing of ''significant'' spills and leaks which EPA believes is reasonable for ensuring appropriate consideration of this matter when developing SWPPPs.

Commenters also recommended that additional non-storm water discharges should be authorized for discharge by the MSGP. Specifically, it was recommended that the permit authorize minor vehicle wash water, de minimis amounts of materials such as dirt, and discharges associated with emergency situations. In response, EPA believes that the list of authorized non-storm water discharges should be limited to minor discharges which are expected to pose little risk to the environment. Discharges such as vehicle wash water or discharges associated with emergency situations may not fall into this category. EPA also notes that materials such as ''dirt'' are not prohibited from storm water discharges, provided that the amount of the material in the discharges has been minimized through proper implementation of pollution prevention practices, and that water quality standards are not exceeded.

A commenter also recommended that the permit allow modification of facilities without formal permit modification. In response to this issue, Part IV.C of the MSGP requires that SWPPPs be modified whenever there is a change at a facility which has a significant effect on the potential for discharges of pollutants to waters of the United States. This provision is intended to provide flexibility for operators to accommodate changes at a facility without formal permit modification.

Another commenter noted that the MSGP expires in the year 2000 and recommended that EPA consider a longer permit term such as 7 years which EPA has allowed in certain special programs such as Project XL. In response, the flexibilities provided under Project XL (excellence in leadership, which is part of the government's reinvention effort) are intended to be used in situations where variation from strict regulatory requirements (such as maximum permit terms) would be advantageous to permittees and the environment. It is now applied only to pilot projects after intensive review of the specific circumstances faced by individual facilities. Its broad application to all facilities regulated by the MSGP would, at best, be premature. Furthermore, the maximum five-year term for NPDES permits is established within the CWA itself in section 402(b)(1)(B) and cannot be modified via Project XL. Also, information was not provided in this case that a longer permit term is needed by permittees or that the environment would benefit. Therefore, the expiration date of the MSGP was not changed.

Comments Concerning Monitoring Requirements of the MSGP

Numerous comments and questions were received regarding the monitoring requirements of the MSGP. The Agency's responses to these comments are grouped below by subject matter.

Use of Monitoring Data Collected Under the Baseline Industrial General Permit To Satisfy MSGP Fourth Year Monitoring Requirements

For transitioning Baseline Industrial General Permittees, EPA proposed (62 FR 37464) that facilities may use their most recent monitoring results for averaging purposes to see if monitoring would be required on an outfall-by-outfall, pollutant-by-pollutant basis during the fourth year of the MSGP. EPA clarified in Section III.D.4 of the preamble to the proposed modification (62 FR 37459) that the usable monitoring data was limited to the two most recent sampling events conducted for the Baseline Industrial General Permit. One commenter stated that using only two data points was inconsistent with the intent of the MSGP as originally published in 1995, which required a minimum of four data points to determine the effectiveness of a facility's SWPPP. In response, EPA believes that for transitioning Baseline Industrial General Permittees that have been monitoring their industrial storm water discharges, the two most recent semi-annual or annual data points should provide sufficient information to reflect the effectiveness of a facility's storm water pollution prevention plan at reducing the release of pollutants. The final permit modification has been revised to clarify that monitoring results from the last two semi-annual or annual sampling events may be used by transitioning Baseline Industrial General Permittees to satisfy this requirement.

Issues Relating to the Benchmark Criteria for Analytical Monitoring Waivers

Several comments were received concerning the benchmark concentrations in Table 3 of the proposed permit modification (62 FR 37459; reprinted from Table 5 of the original MSGP [60 FR 50826]). The

MSGP currently provides a waiver on a parameter-by-parameter, outfall-by-outfall basis from the analytical monitoring requirements in the fourth year of the term of the permit if the average annual concentration of a specific pollutant at a specific outfall during the second year sampling period is less than the benchmark concentration. If it is, then the permittee is not required to monitor for that pollutant at that outfall during the fourth year monitoring period. The final modified MSGP also provides this waiver on an outfall-by-outfall, pollutant-by-pollutant basis for facilities transferring to the MSGP if the average of the two most recent sampling results for a specific pollutant at a specific outfall from the baseline industrial permit is less than the MSGP's benchmarks values, provided sampling was required by the BGP for the appropriate parameters.

Commenters expressed concern that the benchmark concentrations were in effect numeric effluent limitations for storm water discharges. However, as pointed out by EPA when the MSGP was originally issued in 1995, the benchmarks are not storm water effluent limitations. The benchmarks provide a means for identifying low risk discharges for which additional monitoring should not be required in the fourth year of the term of the permit. The benchmarks also provide an incentive for facilities to implement an effective SWPPP by eliminating the fourth year monitoring requirement if they comply with the benchmarks. However, a facility would not necessarily be in noncompliance with the permit if the facility does not comply with the benchmarks. Compliance with the permit would be based largely on whether a facility develops and implements a SWPPP in accordance with the permit requirements.

Commenters also objected that some of the benchmark concentrations were too stringent. In response, EPA points out that the benchmarks in the 1995 MSGP were revised from the proposed concentrations in response to similar comments on the proposed MSGP. EPA believes that the benchmarks are suitable for the primary purpose noted above (i.e., identifying low risk discharges).

Another commenter objected that the benchmarks do not take into consideration the dilution in the receiving water. This issue was also raised during the issuance of the original MSGP. In addition to being indicators of low risk discharges, the benchmarks are also intended to be indicators of whether an effective SWPPP is being implemented at a facility. The end-of-pipe concentrations are more appropriate when judging the effectiveness of a SWPPP than a concentration which is adjusted based on the available dilution in the receiving water. As such, the MSGP's benchmark concentrations do not consider dilution as suggested by the commenter.

Another commenter expressed concern that some of the benchmarks were based on the highest method detection limit multiplied by a factor of 3.18. The commenter noted that based on recent discussions with EPA, another multiple may be recommended in future guidance. In response, EPA points out that the multiple used for the benchmarks was based on the guidance available when the MSGP was issued in 1995. EPA has not yet finalized the additional guidance referred to by the commenter. The benchmarks are based on the latest available guidance and EPA therefore believes they are appropriate.

Another commenter argued that the benchmark concentrations should take into consideration the effect of naturally occurring pollutants at different locations. In response, the final storm water regulations of November 16, 1990 (55 FR 48010) clarify that dischargers are responsible for the quality of their discharges regardless of the source of the pollutants. As such, the benchmark concentrations do not consider the effects of naturally occurring pollutants on storm water discharges.

Visual Examinations

Several commenters objected to the requirement in the MSGP for visual examinations. A commenter argued that such sampling would not be useful, nor would permittees make meaningful modifications to their SWPPPs based on the results. The commenter noted that storm water can pick up sediment and debris naturally.

Most sectors of the MSGP require quarterly visual examinations (except Sector S which covers air transportation). EPA disagrees with the commenter concerning the usefulness of the visual examinations. Materials such as sediment and debris are pollutants which can degrade downstream receiving waters. The presence of such materials in storm water, as well as other indicators of pollution such as an oil sheen, foam or scum, are a measure of the degree to which a SWPPP is being successfully implemented and the potential effects of these discharges on receiving waters. Further, the likely origin of such materials at a facility should be readily apparent in many cases so that a permittee may appropriately modify the SWPPP or its implementation.

A commenter suggested that visual examinations only be required at the time a facility inspection takes place, regardless of whether rain and discharges are occurring at that time. Visual examinations would only be conducted if a sample were available. In response, EPA believes that this recommendation would be inadequate to fulfill the intent of the visual examinations since in most instances rainfall would not coincide with the regular facility inspections. As such, the permit was not modified in accordance with this recommendation.

A commenter also noted that discharges from oil and gas facilities may be controlled discharges from bermed areas. The commenter argued that a visual examination of the surface of the water can be made prior to the controlled releases and that a visual examination of samples should not be required in addition to such observations. In response, EPA believes that the visual examinations could provide useful information beyond that provided by observations of the surface of the bermed water. The discharger may observe additional indicators of pollution (such as turbidity, odor or color) which may be less apparent from observations of the surface of the water. Moreover, the visual examinations are quick and inexpensive and should not place a significant burden on permittees. As such, EPA has not modified the MSGP in response to this comment.

Compliance Monitoring by the Timber Industry

A commenter expressed concern regarding the effluent limitations guidelines (ELGs) which were proposed to be added for discharges associated with the spray down of lumber and wood products in storage yards (wet decking) used by the timber industry. The proposal would add to the MSGP the ELGs from 40 CFR Part 429, Subpart I for ''debris'' and pH. These ELGs were inadvertently omitted from the MSGP when it was originally issued in 1995.

The commenter objected that the proposed ELG for ''debris'' in the discharges would be too lax. The term ''debris'' refers to woody material such as bark, twigs, branches, heartwood or sapwood that does not pass through a 2.54 cm (1.0 inch) diameter round opening and is present in the discharge. The commenter recommended that the limit be set at ½ inch instead. The commenter also recommended more

frequent monitoring than once/year as proposed. In addition, the commenter noted that discharges would be allowed provided no chemicals were used in the spray and no chemicals were applied to the wood during storage. The commenter recommended that the permit also prohibit discharges if chemicals had been used prior′ to storage.

In response to these concerns, EPA proposed the modification to include promulgated ELGs for wet deck discharges which were inadvertently omitted from the MSGP. The definition of the term ''debris'' was established when the ELGs for the timber industry were promulgated in 1981. Comments on the ELG for ''debris'' should have been submitted at the time of the development of the guidelines. EPA also believes that the monitoring frequency for debris and pH is appropriate considering the risks posed by the discharges, and is generally consistent with other compliance monitoring frequencies in the MSGP.

Usefulness of Monitoring Results

Several commenters objected that the monitoring requirements of the MSGP may not provide useful information and could simply divert resources away from effective implementation of the SWPPPs. These commenters argued that site inspections would be adequate for effectively controlling pollutants. The commenters also argued that EPA should be focusing more on receiving water monitoring to evaluate the overall health of the receiving waters in a given watershed. According to the commenters, this type of monitoring would be more consistent with recommendations which are being developed by EPA's Urban Wet Weather Flows Advisory Committee.

In response, EPA believes that the monitoring requirements of the MSGP are appropriate despite the points made by the commenters. For most facilities, as recommended by the commenters, the MSGP only requires site inspections as opposed to analytical monitoring. Of the over 10,000 facilities currently covered by the MSGP, only about 2,600 (or approximately 26%) indicated on their NOIs that they would fall into a category for which monitoring is required. The monitoring requirements are also targeted toward the highest risk facilities as determined by the storm water monitoring data submitted with the group applications. EPA does not necessarily agree that site inspections (or even visual examinations) are adequate as a complete substitute for analytical monitoring. Visual site inspections may simply overlook significant sources of pollutants which contribute to storm water pollution, and visual examinations of discharges will not detect certain pollutants such as dissolved metals. Analytical monitoring is still useful in identifying and evaluating important specific sources of pollutants.

EPA agrees with many of the points made the commenters regarding the benefits of watershed and receiving water monitoring. In 1996, EPA and the Center for Watershed Protection published a report entitled Environmental Indicators to Assess Stormwater Control Programs and Practices'' which lays out numerous alternatives to chemical monitoring to assess the environmental effects of storm water discharges and measure the progress of storm water management programs. However, at the present time, we also believe that the monitoring requirements of the MSGP are appropriate to gather additional information on the quality of storm water discharges from specific sources and assess the effectiveness of the SWPPPs which are currently being implemented. A shift toward more resource monitoring and less chemical monitoring may be appropriate over time as additional data are gathered. Facilities wishing to pursue watershed monitoring, or receiving water monitoring as an alternative to the monitoring requirements of the MSGP at this time should pursue individual permits or an alternate general permit.

Using Representative Outfalls

The MSGP provides that when a facility has two or more outfalls which are ''substantially identical,'' only one of the outfalls needs to be monitored. However, a commenter objected that the criteria for determining whether two outfalls are ''substantially identical'' are too stringent and inflexible.

EPA disagrees that the MSGP is too inflexible in this regard. The permit simply requires an explanation in the SWPPP of why the discharges from the outfalls would be similar based on a review of the industrial activities and pollutant controls in the drainage areas of the outfalls. These requirements do not impose an excessive burden on permittees.

Arid Climate Issues

A commenter noted that in arid areas of the country, a quarter may pass with no measurable storm water discharges. The commenter asked how an annual average would be determined for purposes of comparison with permit benchmark values; i.e., should a zero be included in determining the annual average or should the average be based solely on actual data measurements collected during the year.

The MSGP requires that the average concentration be determined on the basis of all monitoring data collected during the monitoring year. Therefore, a zero would not be included in determining the annual average if a discharge did not occur within a particular quarter; only actual monitoring results would be used.

New Mexico Issues

A commenter asked whether the low concentration waiver for Sector O (steam electric power plants) would apply to the additional monitoring requirements set forth in Part XII of the MSGP (State certification requirements) for New Mexico. In response, EPA is clarifying that the low concentration waiver applies not only to pollutants listed in Part XI, such as the one for total recoverable iron found in Table O–1, but also to the additional pollutants listed in Part XII for dischargers located in New Mexico.

The commenter also asked about the basis for the list of additional pollutants to be monitored for Sector O facilities in New Mexico. In response, EPA points out that monitoring for these pollutants was determined by the State to be necessary to ensure compliance with State water quality standards based on a review of the monitoring data submitted by facilities in the sector.

The commenter also objected to the benchmark concentration of 100 mg/l for total suspended solids arguing that it is not appropriate for the arid southwest which has less vegetation than other areas. The commenter noted that the value of 100 mg/l was derived from the Nationwide Urban Runoff Program (NURP) study which looked at urban runoff at 28 locations around the country, but generally excluding the arid southwest. However, EPA believes that it would be difficult to try to develop different benchmarks for different areas of the country as the commenter suggested. In addition, many facilities in the arid southwest are already covered by the MSGP and we have no evidence that the benchmark for total suspended solids is unworkable. Therefore, no changes were made in response to this comment.

Miscellaneous Monitoring Issues

A number of miscellaneous comments and questions were received concerning the monitoring requirements of the MSGP. One commenter objected to the requirement to test the runoff from storms of at least 0.1 inches of rain that occur at least 72 hours from the

previous such event. The commenter noted that such restrictions can be problematic in arid areas as well as areas where rainfall is common. In response, EPA believes that the MSGP's provisions for monitoring waivers adequately address these concerns. For arid areas, the MSGP includes a waiver from monitoring requirements when dry conditions persist for extended periods of time. A waiver is also available for wetter areas of the country where a time period less than 72 hours between storms is representative of local conditions.

Another commenter recommended that monitoring results not be used for enforcement purposes. In response, the purpose of the monitoring is primarily to assist the facility in evaluating whether the SWPPP is being successfully implemented and identifying any shortcomings. In addition, the overall risks posed by a given facility can be evaluated. However, aside from the small number of facilities subject to effluent limitations guidelines, the MSGP includes few numeric effluent limitations for which permittees are subject to enforcement action where there are excursions above these limits. For most facilities, compliance with the MSGP would be based largely on whether or not the facility had developed and was implementing an adequate SWPPP.

One commenter also expressed concern regarding the effects of the monitoring requirements on small businesses. The effects on small businesses of the original MSGP and today's modification were both considered by EPA (see 60 FR 51067 and Section VIII of the fact sheet accompanying today's permit modification). EPA concluded that the permit requirements would not have a significant impact on a substantial number of small entities.

Another commenter objected to the test method for total phenols, EPA method 420.1. The commenter noted that total phenols is included in Table 5 of the fact sheet which sets forth the benchmark concentrations for the fourth year monitoring waiver. The commenter argued that the test method fails to detect some priority pollutant phenols and should not be used in the permit. In response, NPDES regulations at 40 CFR 136 require that test methods approved under 40 CFR 136 be used for the monitoring which is required by NPDES permits, unless alternate methods have been approved. The only currently approved method for total phenols is EPA method 420.1 and therefore the permit retains the requirement for the use of this method.

Another commenter noted that ''subsectors'' of a larger facility may occupy only a small fraction of an overall facility and may contribute little in the way of storm water pollutants. The commenter argued that monitoring should not be required for such subsectors unless there is concern that there may be pollutants from the activities of the subsector. In response, a subsector of a larger facility may be required to monitor because the subsector falls into a sector of the MSGP which requires monitoring. However, this is simply a consequence of the fact that the industrial activity in question was identified as a high risk activity by the group application monitoring data. As such, EPA believes that the monitoring requirement is appropriate. However, the MSGP does not require that the entire facility monitor storm water because of the presence of a small subsector for which monitoring is required. In addition, the MSGP provides that monitoring would not be required if permittees can certify on a pollutant-by-pollutant, outfall-by-outfall basis that their industrial activities are not exposed to storm water.

One commenter requested that the MSGP not require that monitoring data be submitted to the corresponding State environmental management agency as well as to EPA. Some States had required submittal of monitoring data as a requirement of their Clean Water Act Section 401 certification for the MSGP as originally published in 1995. In response, EPA points out that States may require the addition of any special conditions in the MSGP which they believe are necessary to ensure compliance with applicable State requirements. EPA believes this is not an unreasonable condition and no changes were made to the MSGP in response to the comment.

Another commenter recommended that the construction industry not be subject to analytical monitoring requirements. In response, EPA notes that the MSGP only regulates onsite construction discharges at permitted industrial facilities consisting of less than five acres of disturbance. Analytical monitoring is not required at such construction projects as recommended by the commenter. Construction projects disturbing five or more acres are regulated by separate individual or general permits in non-NPDES delegated states which, as recommended by the commenter, usually do not require analytical monitoring of storm water discharges.

Another commenter expressed concern regarding Part J.4.a of Sector J of the MSGP which prohibits dilution of mine dewatering discharges with ''other storm water runoff or flows'' to meet the effluent limitation guideline. The commenter was concerned that the wording implied that dilution would be acceptable if water sources other than those specifically mentioned were used as the dilution water. In response, EPA believes that the condition is sufficiently clear that mine dewatering discharges are not to be diluted with any other water sources to comply with the effluent limitation. As such, no changes were made to the permit in response to the comment.

A commenter disagreed with what the commenter perceived to be a proposal to authorize storm water discharges from open dumps which receive wastes from ''vehicle maintenance, truck washing and/or recycling'' facilities. In addition, if such facilities were authorized to discharge, the commenter recommended monitoring for oil and grease at a minimum. In response, EPA notes that the July 11, 1997, proposed permit modification included the proposal to authorize industrial storm water from open dumps which was one of the categories of facilities covered by the Baseline Industrial General Permit but originally excluded from the MSGP. Open dumps were not included in Sector L of the original MSGP which covered only landfills and land application sites. The reference to ''vehicle maintenance, truck washing, and/or recycling'' in Sector L pertains to the overall requirements of the MSGP for co-located facilities. For example, if a particular landfill includes a vehicle maintenance facility at the same location, the requirements of Sector P, including its monitoring requirements, would apply to that portion of the overall facility. Although Sector P does not require monitoring for oil and grease, EPA believes that the requirements are appropriate based on the data received in the group applications.

Another commenter requested a clarification of the monitoring schedule which would apply to new facilities seeking coverage under the MSGP, other than facilities transferring from the BGP. In response, new facilities other than baseline industrial permit facilities which seek coverage under the MSGP at this time would only be subject to the monitoring requirements during the fourth year of the MSGP (i.e., October 1, 1998—September 30, 1999). It should also be noted, however, that the MSGP also includes annual or quarterly compliance monitoring for a small

number of facilities with discharges subject to numeric effluent limitations. The compliance monitoring requirements would apply immediately upon submittal of the NOI.

Concern was also expressed regarding the availability of laboratories to perform the analytical tests required by the MSGP. In response, EPA points out that except for facilities subject to effluent limitations guidelines, the MSGP does not require additional analytical testing until the last quarter of the 1998 calendar year. This should provide adequate lead time for permittees to ensure the availability of a testing laboratory for their samples. Moreover, many transitioning baseline industrial permit facilities will no longer be subject to analytical monitoring once they transfer to the MSGP.

No Exposure Incentive

Several commenters expressed concern regarding EPA's proposal for a ''no exposure incentive'' and the potential effects of this proposal on the MSGP. This proposal is being developed in connection with the development of regulations under CWA section 402(p)(6) (aka ''Phase II'').

The Phase II storm water regulations were proposed by EPA on January 9, 1998 (63 FR 1536) with a 90 day comment period. The regulations are scheduled to be finalized by March 1, 1999. In the meantime, the requirements of existing storm water regulations will continue to apply. Comments on the ''no exposure incentive'' proposal should have been submitted during the comment period for the Phase II regulations.

Consistency With EPA's Long Term NPDES Permitting Strategy

A commenter noted that EPA's long term NPDES permitting strategy for industries calls for industry-specific permitting as the third tier, with watershed permitting as the second tier. The commenter argued that in accordance with this strategy, EPA should be engaging in watershed permitting prior to industry-specific permitting.

In response, EPA would encourage that special watershed permits be issued where they are needed. However, EPA also points out that storm water permitting for industrial sources does not necessarily have to follow the tiered schedule exactly as set forth in the long term permitting strategy. Further, the MSGP was the end result of the group permit application process for industrial storm water dischargers provided by the regulations at 40 CFR 122.26(c)(2). EPA had a responsibility to develop timely industry-specific storm water permits in response to the group applications which were submitted.

Orphan Facility Economic Advantage

Several commenters objected to the proposed inclusion of the ''orphan'' facilities in the MSGP, arguing that such facilities would receive an economic advantage over facilities which participated in the group application process. In response, EPA notes that essentially the same issue arose during the issuance of the MSGP in 1995. Commenters expressed concern that the MSGP would be open to all facilities, not just those that had participated in group applications. As in 1995, however, EPA has not identified any practical means of providing some sort of credit for group members. EPA notes that the ''orphan'' facilities have required permit coverage under the baseline industrial permit since 1992 and have been subject to the costs associated with that permit for a considerably longer period of time than facilities which participated in the group application process and which have required permit coverage since 1995.

A commenter also recommended that storm water data should be collected for the orphan facilities to more appropriately determine permit conditions for them. EPA disagrees that more storm water data are necessarily required to determine appropriate permit requirements for the facilities. These facilities closely resemble other facilities in their proposed sectors and should be appropriately regulated by the requirements of those sectors.

Permit as a Shield

A commenter requested that EPA clarify that coverage under and compliance with the MSGP would shield the permittee for discharges which occur and are not prohibited by the permit. In response, EPA notes that the MSGP authorizes storm water discharges and certain listed non-storm water discharges, subject to the terms and conditions of the permit. These are the only discharges which are authorized by the permit. CWA section 402(k) provides that compliance with an NPDES permit is also considered to be compliance, for purposes of section 309 and 505 enforcement, with sections 301, 302, 306, 307 and 403 of the Clean Water Act (except for any standard imposed under section 307 for a toxic pollutant injurious to human health). Therefore, permittees discharging in compliance with the MSGP are not shielded from non-compliance with the Clean Water Act for discharges that are not identified, and thus authorized and limited by the permit.

Emergency Planning and Community Right to Know Act (EPCRA) Requirements

A commenter noted that EPCRA reporting requirements were modified on May 1, 1997, (62 FR 23834). Addendum F of the MSGP provides a list of water priority chemicals which trigger certain additional SWPPP requirements for facilities covered by the permit. The list of chemicals in Addendum F is based on EPCRA reporting requirements in effect in September, 1995, at the time of the issuance of the MSGP.

The commenter also noted that the proposed modification of the MSGP is limited to a few selected provisions, not including the list of chemicals in Addendum F. The commenter requested confirmation that Addendum F would not be modified at this time. EPA has reviewed this matter and confirms that Addendum F is not being modified at this time. The primary intent of the current MSGP modification is to allow coverage of ''orphan'' facilities (those facilities covered by the baseline permit but not the MSGP) under the MSGP and for simplicity, minimize the number of other modifications.

Addition of Sector AD to the MSGP

Several commenters expressed concerns over the proposed addition of Sector AD to Part XI of the MSGP. One commenter observed that there appears to be no need for this sector since EPA is proposing to modify the MSGP to cover all facilities which were covered by the BGP but excluded from the original MSGP. This commenter also argued that there would be no basis for the permit conditions if the type of facilities to be covered were not known.

In Section III.F.4 of the draft fact sheet, EPA indicated that the modified MSGP should cover all the facilities which were covered by the BGP but excluded from the MSGP. As such, we expect that the commenter will prove to be correct regarding the need for Sector AD. Nevertheless, EPA has retained the sector in the final modified MSGP to cover any inadvertent omissions. In addition, the sector provides for a readily available means for permitting many Phase II storm water sources which may be designated by permitting authorities pursuant to 40 CFR 122.26(g)(1)(i). The permit requirements for the new sector are the same as the requirements in the baseline industrial permit. Based on our experiences with the BGP, these requirements should be

appropriate and sufficiently flexible to accommodate a wide variety of facilities which may be permitted under Sector AD. If the requirements are inappropriate for a given facility, an individual permit could be issued.

Other commenters argued that general permits may only be issued for similar (and identified) discharges and this may not be the case for discharges which may be covered by this sector. However, NPDES regulations at 40 CFR 122.28(a)(2)(i) provide broad discretion when issuing general permits for storm water discharges. EPA disagrees that the facilities and discharges which may be covered would be too dissimilar to be covered by a general permit. The permit conditions provide considerable flexibility and can be applied to a wide variety of facilities. Moreover, as pointed out above, individual permits could also be issued if the requirements of Sector AD are inappropriate for a particular facility.

Commenters also objected to some of the specific permit requirements for Sector AD. In particular, concerns were expressed regarding: 1) Part XI.AD.3.a(2) which only requires a description of sources which may contribute ''significant'' amounts of pollutants to storm water discharges; 2) Part XI.AD.3.a(3) which only requires ''appropriate'' controls for a facility; 3) Part XI.AD.3.a(3)(c) which provides that clean up equipment ''should'' be available for spills as opposed to ''must'' be available; 4) Part XI.AD.3.a(3)(d) which requires periodic inspections but fails to require an inspection interval (e.g., once per month); 5) Part XI.AD.3.a(3)(g)(i) which requires that permittees only certify that outfalls have been evaluated for non-storm water discharges ''if feasible''; and 6) the perceived absence of requirements for storm water controls to capture and remove pollutants, and for process changes such as changes in material handling which could prevent pollution of storm water.

In response to these issues, EPA points out that Sector AD in Part XI includes the same conditions that were included in the Baseline Industrial General Permit issued in 1992. Further, EPA believes that the language is appropriate and ensures the necessary flexibility for the variety of facilities which could be covered by this sector. EPA also points out the Part XI.AD.3.a(3)(h) does require a consideration of structural storm water controls to capture and remove pollutants and requires that such controls be included in SWPPPs when appropriate. In addition, the permit requires a consideration of material management practices and whether modified practices would be available to reduce exposure of materials to storm water (see Part XI.AD.3.a.(3)(c) for an example).

One commenter requested that EPA clarify that not all components of the SWPPP required by Part AD are necessarily applicable to all facilities. In response, EPA agrees that not all components of the SWPPP as described may apply to all facilities. However, each component must be considered by permittees in developing SWPPPs and included as appropriate.

Another commenter identified typographical errors in Parts XI.AD.3.a(3)(g)(i) and 3.a(3)(i) which EPA has subsequently corrected in the final modified MSGP. The same commenter also stated that Part XI.AD.4 only requires that a comprehensive site compliance evaluation be conducted once a year, and believed that EPA's intention was that these evaluations be conducted ''at least once a year.'' In response, EPA agrees with this comment and has revised the final modified permit to allow for more than one evaluation per year in order to address changing conditions at facilities in a more timely manner.

Inclusion of Manufacturers of Leather Products Into Sector V

Several commenters inquired about the basis for EPA's proposed inclusion of manufacturers of leather products into Sector V which covers textile mills, apparel and other fabric product manufacturing. The commenters argued that the use of a general permit for the facilities, at a minimum, would require a showing that the facilities would have similar discharges.

In response, EPA points out that NPDES regulations at 40 CFR 122.28(a)(2)(i) provide broad discretion when using general permits for storm water discharges. The criteria cited by the commenter regarding similarity of discharges and other factors apply to discharges other than storm water. Nevertheless, EPA believes that the nature of the operations and discharges from leather products manufacturers would be similar to other facilities in Sector V. EPA also notes that the facilities which are being added to Sector V manufacture finished products as do the existing facilities in the sector. Sector Z (leather tanning, which is another sector which might have been considered) covers facilities which produce leather from animal hides and skins. EPA believes Sector V is the more appropriate sector for the leather product manufacturers since finished products are involved in both cases.

Requirements of Sector N

A commenter expressed concern regarding some of the specific requirements of Sector N (scrap and waste recycling) and argued that some of the requirements were too inflexible. In response, EPA believes that the commenter is mistaken regarding the perceived inflexibility of this sector. The permit generally requires that certain BMPs be considered by permittees and included in SWPPPs as appropriate as opposed to being absolute requirements.

The commenter also objected that the requirements of this sector seemed to be more stringent than the requirements of another sector which, in the commenter's view, should have been at least as stringent. In response, EPA conducted a thorough review of available BMPs and monitoring requirements for the different sectors when the MSGP was originally issued in 1995. EPA believes that the requirements of the different sectors, such as Sector N, are appropriate based on the information submitted in the group applications concerning available BMPs and the monitoring results which were submitted. Therefore, no changes were made in response to this comment.

The commenter also recommended that the majority of the pollutants for which monitoring is required in Sector N should be deleted. The commenter recommended that monitoring for lead should be the only sampling parameter required. Further, the commenter recommended that only one sample should be required during the term of the MSGP. In response, EPA points out that the list of pollutants for which monitoring is required by the MSGP is based on the data submitted in the group permit applications. EPA believes that the parameters selected for monitoring for Sector N are appropriate based on these data. EPA also believes that one sampling event only during the term of the permit would be inadequate to characterize the storm water discharges from those facilities. Therefore, no changes have been made to this sector in the permit.

Response to Comments on the Agency's Separate Proposal to Modify Sector G

One commenter stated that it generally agreed with EPA's interpretation of the applicability of effluent limitation guidelines to the ore mining activities contained in Table G–4 of the MSGP, particularly the broad interpretation of the term ''mine drainage'' to include runoff from waste rock and overburden. The commenter requested that EPA reiterate its position

regarding this issue, but believes that use of the term ''continuing authorization'' for some mining operations which may have misinterpreted this table as well as the applicability of the effluent limitation guidelines in order to obtain coverage under the Baseline Industrial General Permit, is incorrect and should be deleted.

On October 22, 1997, EPA proposed revisions to Sector G of the MSGP (62 FR 54950) to (1) delete those portions of Table G–4 that address effluent guidelines, (2) describe only those parts of a hard rock mining operation that could claim coverage under the permit, and (3) slightly expand the categories of sources at a hard rock mining and dressing operation that could claim coverage under the permit. EPA anticipates that this final permit modification will be published in the **Federal Register** in the near future and will clarify which discharges are eligible for coverage under the MSGP.

Signatory Requirements

One commenter recommended that EPA finalize its proposal of December 11, 1996 (61 FR 65268), regarding NPDES signatory requirements concurrently with the modification of the MSGP. This would provide some relief by giving facility managers the authority to sign notifications.

The proposal of December 11, 1996, is an extensive Agency-wide effort to respond to a directive issued by the President on February 21, 1995, which directed Federal agencies to review their regulatory programs to eliminate any obsolete, ineffective, or unduly burdensome regulations. However, EPA has not yet completed its final response to the directive. EPA's response to the issue raised by the commenter will accompany the Agency's overall response to the directive.

Spill Response Requirements

Comments were received suggesting that a restoration or remediation requirement be incorporated into the permit to address spills of oil or hazardous substances which require reporting to the National Response Center.

In response, EPA believes that appropriate provisions are already in place which require MSGP permittees to: (1) implement measures to prevent spills or unauthorized releases; (2) ensure prompt clean-up of such releases to prevent their discharge during a subsequent storm event; and (3) revise their SWPPPs to prevent such releases in the future. EPA also points out that the purpose of the NPDES permit program is to control discharges of pollutants before they enter waters of the United States. Restoration could be addressed, however, through enforcement action against a permittee for noncompliance with the permit.

Guidance for Louisiana, Oklahoma and Puerto Rico Permittees

Comments were received requesting guidance for Baseline Industrial General Permittees in the States of Louisiana and Oklahoma which were both recently authorized to implement the NPDES permitting program in lieu of the EPA. The date when the baseline industrial permit was issued in Puerto Rico was also requested. EPA's responses follow below by area:

Louisiana

The State of Louisiana was authorized by EPA to implement the NPDES permitting program, including authority over general permits such as the baseline industrial permit and the MSGP, on August 27, 1996, and regulate all facilities in the State except those located on Indian country which will continue to be covered by the EPA. Operators completing an NOI for industrial storm water discharge permit coverage which answered ''yes'' to the question of whether their facility is located on Indian country continue to be regulated by the EPA.

In Louisiana, the Louisiana Department of Environmental Quality (LDEQ) is the State agency which administers the NPDES program except in Indian country. Currently, all Baseline Industrial General Permittees located outside of Indian country in Louisiana which submitted an NOI within the time frames prescribed in Part VII.B of the permit will remain covered by operation of law until they receive further instructions from the LDEQ. MSGP permittees located outside of Indian country in Louisiana are not affected by today's modifications to EPA's MSGP.

To assist the LDEQ with administering its baseline industrial permit and MSGP outside of Indian country, EPA continues to maintain data management functions such as processing NOI and NOT forms. Permittees will be informed by the appropriate regulatory agency (i.e., EPA or LDEQ) when there are changes to their respective permits or programs.

Oklahoma

A more detailed response is needed for industrial storm water discharge permitting in Oklahoma. Though the State of Oklahoma (specifically, the Oklahoma Department of Environmental Quality or ODEQ) was authorized by EPA to implement the NPDES permitting program except in Indian country on November 19, 1996, it did not include the authority to issue or administer general permits such as the Baseline Industrial General Permit or the MSGP until September 11, 1997. Consequently, EPA administered the industrial storm water discharge program in Oklahoma until that time. In addition, EPA continues to maintain NPDES authority over discharges from oil, gas and pipeline operations which are regulated at the State level by the Oklahoma Corporation Commission, and discharges regulated at the State level by the Oklahoma Department of Agriculture. Since it appears that the only type of facilities regulated by the Oklahoma Department of Agriculture which require industrial storm water discharge permitting are concentrated animal feeding operations (CAFO), no modifications were proposed to the MSGP since CAFOs are covered by a different NPDES general permit. To summarize, the following entities will continue to be regulated by the EPA and not the ODEQ for industrial storm water discharge purposes: Operators completing an NOI for industrial storm water discharge permit coverage which answered ''yes'' to the question of whether their facility is located in Indian country; operators who are regulated by the Oklahoma Corporation Commission and submitted a Notice of Intent with a primary Standard Industrial Classification code in the 1300 series for oil and gas exploration and production related industries or pipeline operations; and facilities regulated by the Oklahoma Department of Agriculture. All other industrial storm water discharges are regulated by the ODEQ.

Currently, all Baseline Industrial General Permittees located outside of Indian country in Oklahoma which submitted an NOI within the time frame prescribed in Part VII.B of the permit will remain covered by operation of law until they receive further instructions from the ODEQ. MSGP permittees located outside of Indian country in Oklahoma and not regulated by Oklahoma Corporation Commission are not affected by today's modifications to EPA's MSGP.

In November 1997, the ODEQ assumed data management functions such as processing NOI and NOT forms for the industrial storm water facilities which it regulates. NOIs and NOTs received by EPA's NOI/NOT data center for facilities regulated by the ODEQ will be forwarded to the Department for processing.

Puerto Rico

The Baseline Industrial General Permit was issued in Puerto Rico on September 25, 1992. The above information has been incorporated into the final Fact Sheet.

Requirements for Petroleum Refineries

Several commenters stated that the language incorporating petroleum refineries into the MSGP was too broad and not restrictive enough considering the types and amounts of pollutants which could be discharged during storm events.

EPA disagrees and believes that the proposed language places a clear boundary on the areas of refineries which may be eligible for industrial storm water discharge coverage under the MSGP. As proposed, EPA cautioned that areas eligible for coverage at petroleum refineries will be very limited because the term ''contaminated runoff,'' as defined under 40 CFR 419.11, includes storm water runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property, and is therefore not eligible for coverage under the MSGP. To provide clarification as to which areas at a petroleum refinery may be eligible for MSGP coverage, provided discharges from these areas do not co-mingle with contaminated runoff, EPA listed as examples vehicle and equipment storage, maintenance and refueling areas. Further, EPA listed areas not eligible for MSGP coverage including those handling raw materials, intermediate products, by-products, waste materials, chemicals and material storage; loading and unloading areas; transmission pipelines; and processing area.

The permit remains as proposed with the following exception. EPA notes that the term ''finished products'' was inadvertently omitted from the list of areas not eligible for permit coverage in the proposal and has included it in the final permit modification.

Accessibility of Storm Water Pollution Prevention Plans (SWPPPs)

One commenter recommended that the MSGP provide the same type of public access to SWPPPs as that proposed in the reissuance of EPA's Construction General Permit. In response, EPA notes that the final Construction General Permit was revised so that it encourages but does not require public access to SWPPPs. The Clean Water Act grants EPA the authority to require the submission of information by the regulated community. It does not, however, require the regulated community to provide information to private citizens upon request. When EPA reissues the MSGP in the year 2000, EPA will review the current plan availability issues. The plan access provisions currently contained in the MSGP have not been modified.

Permitting of Open Dumps

Several comments were received against the inclusion of open dumps in the expanded scope of coverage of the modified MSGP. Reasons ranged from the extreme variability of wastes received; illegality of open dumps; possibility of leachate first seeping through the ground then surfacing and becoming indistinguishable from other storm water discharges; and, the high potential for erosion. Other comments concerned the definition of ''qualified personnel'' and the dissemination of Discharge Monitoring Reports to local governments as well as to large and medium Municipal Separate Storm Sewer Systems (MS4s) that receive open dump industrial storm water discharges.

In response, through this permit modification EPA is neither facilitating the continuation of open dumps nor condoning illegal waste disposal practices. By allowing the inclusion of open dumps under Section XI.L of the modified MSGP, EPA is expeditiously providing continued permit coverage of allowable industrial storm water discharges from such facilities. Non-storm water discharges such as leachate, and vehicle and equipment wash waters, are explicitly prohibited from coverage under the MSGP per Section XI.L.2.(a). Such non-storm water discharges would require coverage under another NPDES permit such as an individually drafted permit with site-specific effluent monitoring and limitation requirements. Since individually drafted permits are site-specific, they are resource and time intensive to draft and issue. Further, Section XI.L.3.a.(2)(a)(i) requires the identification and description of any potential sources of pollution, including leachate springs and open dumping areas. Section XI.L.3.a.(3) requires the development of measures to eliminate or control such pollutants. To assist permittees, a definition of ''leachate'' was included in Part XI.L.2.(a) of the permit.

With respect to the comment that Section XI.L.2.b.(3)(h) be revised so that sediment and erosion control plans address areas other than those exhibiting a high potential for significant erosion (i.e., those areas that may have a potential for erosion), EPA found the language as originally published in the September 29, 1995, version of the MSGP to be acceptable and did not propose any modifications. This portion of the permit will remain unchanged.

The term ''open dump'' is defined as any solid waste disposal facility which does not meet the criteria of Subtitle D of RCRA. Regulations for Subtitle D are found under 40 CFR Parts 257 and 258. Thus, the term could be applied to any solid waste disposal facility which does not comply with appropriate requirements. Implementation of the industrial storm water discharge management provisions contained in the modified MSGP will assist open dump operators with addressing sediment and waste run-off problems through storm water run-on and run-off controls.

The term ''qualified operator'' is used throughout the MSGP. It is a general term which means a person who is familiar with a facility's SWPPP and industrial operations, and can identify sources of pollution contacting storm water as well as devise ways to reduce or eliminate its impact on receiving waters. Due to the large scope of coverage of the MSGP, it is not feasible nor is it necessary to require a certain level of education, licensing or experience to meet the definition of ''qualified personnel.'' Licenses, education and experience requirements are best required by other applicable Federal, State, Tribal or local government rules and regulations. As always, EPA recommends the use of good engineering, land and waste management practices at all landfills, land application sites and open dumps to minimize impacts on the environment.

With regard to a comment that Section XI.L.5.b.(1) of the MSGP be modified to require that Discharge Monitoring Reports (DMRs) documenting sample analyses of industrial storm water discharges from open dumps be also sent to local governments that are operators of smaller than medium or large municipal separate storm sewer systems (i.e., based upon a population of less than 100,000), EPA believes that the decision to receive such information is best made at the local level of government. Nothing in the MSGP precludes permittees from complying with all applicable State, Tribal or local laws. Further, though EPA encourages cooperation between local governments and facility operators, it believes that mandating such a requirement may be unduly

burdensome on both facilities and local governments.

In summary, due to the limited allowable types of discharges that Part XI.L allows for open dumps and the prohibition against the discharge of storm water that contacts waste (i.e., leachate), regulation of open dumps will remain in the final permit modification.

Sand, Gravel and Crushed Stone Mine Dewatering Discharges

Comments were received requesting that EPA Region 1 be included among the Regions allowing sand, gravel and crushed stone mine dewatering discharges (see 40 CFR 436 Subparts B, C and D) under the MSGP. Currently, such mine dewatering discharges in Region 1 require coverage under an individual NPDES permit. Since Region 1 does not currently have sufficient resources to draft and issue individual NPDES permits to facilities solely for such discharges and MSGP limitations covering these discharges are adequate to protect receiving surface water quality, EPA is extending the coverage under Part XI. J. to include Region 1 along with Regions 2, 6, 10 and the State of Arizona. The permit has been revised accordingly.

Sampling, Inspection and Reporting Burdens Associated With the MSGP

Comments were received concerning the increased cost and administrative burdens placed on the regulated community by increasing the inspections, sampling, analysis and reporting from annual to quarterly.

In the proposed modifications to the MSGP, facilities transitioning to the MSGP from the baseline industrial permit would be required to sample their industrial storm water discharge on a quarterly basis only during the fourth year of the permit (i.e., October 1, 1998–September 30, 1999), provided sampling was required in the sector(s) which applied to a particular facility. This would result in a maximum of four sampling events per facility. If sampling was required in the baseline industrial permit, it was on either an annual or semi-annual basis for each year a facility was covered by the permit. This would result in a maximum of five to ten sampling events for a facility which is comparable to the MSGP requirements. In addition, EPA proposed to allow transitioning baseline industrial permitees to use the last two years of annual or last year of semi-annual monitoring data to determine if fourth year MSGP sampling requirements could be waived on a pollutant-by-pollutant, outfall-by-outfall basis. This proposal was retained in the final modified MSGP.

As in the Baseline Industrial General Permit, the MSGP provides sampling waivers where a permittee can certify on a pollutant-by-pollutant basis that their industrial storm water discharge does not have the potential to contain the pollutant, thus relieving the facility from sampling for that substance at that outfall.

With regard to inspection frequency, the MSGP does require more frequent inspections for certain types of facilities than the Baseline Industrial General Permit. However, these inspections are targeted toward the facilities which pose the greatest risk to storm water and this is generally in accord with the recommendation of the commenter. For reporting sampling results, the submission of DMRs is required once annually at the conclusion of the fourth year of the MSGP. The Baseline Industrial General Permit had a similar requirement for facilities sampling on a semi-annual basis; however, facilities which were required to monitor on an annual basis only needed to submit the results when requested by EPA.

With regard to the comments that more complex SWPPPs will not result in decreased discharges of pollutants through gravel pads, EPA crafted the MSGP so that it provides general industrial storm water discharge and spill controls for maximum flexibility and applicability as the Baseline Industrial General Permit does, but also provides more industry-specific controls. These industry-specific controls provide SWPPP managers with additional information on identifying and controlling the discharge of pollutants which may improve water quality when compared to the Baseline Industrial General Permit. For facilities with gravel pads, general spill prevention measures from both permits would be similar (e.g., use of drip pans under leaking equipment until repairs can be completed; replacement of gravel pads with an impervious surface such as concrete to contain pollutants rather than allowing them to discharge or seep into the ground).

Comments Specific to Alaska

One Alaskan commenter expressed support of EPA's position not to require inspections at inactive and unmanned facilities. In response, EPA notes that the frequency for conducting inspections varies from sector to sector in Part XI of the MSGP, and that some sectors allow for a reduction of the number of required inspections for inactive sites. EPA encourages permittees to carefully review the inspection requirements for each sector which apply to their facilities in order to incorporate the correct inspection frequencies into their SWPPPs. However, in response to comments from the Alaskan oil and gas industry, EPA has modified Section I of the MSGP (for Oil and Gas Extraction Facilities) to include the same reduced inspection frequency found in Sector J for temporarily or permanently inactive mineral mining facilities. The modification provides that only annual inspections (rather than quarterly or semi-annual inspections) are required for temporarily or permanently inactive oil and gas extraction facilities, but only those which are remotely located and unstaffed. EPA believes that this change is appropriate considering the similar nature of the facilities in the two sectors and will address the concerns of commenters regarding the accessibility of remote Alaskan oil and gas facilities in winter. EPA does not intend for this waiver to be applied merely as a cost saving measure or for convenience to limit the number of inspections. It should also be noted that this modification only applies to inactive oil and gas extraction operations (within major SIC group 13) and not to inactive oil refinery operations (SIC 2911) which are added to Sector I by today's MSGP modification.

Another comment requested that EPA set seasonal inspection schedules for Alaska rather than calendar schedules. The comment stated that during a typical year in Alaska snow melt occurs in May or early June, there is little precipitation from June through August, and the ground is frozen from September through May. In response to this comment, it appears that the commenter was referring to the MSGP requirement that permittees conduct visual examinations of storm water on a quarterly calendar basis for the life of the permit unless the site is inactive or unstaffed and that ''the ability to conduct visual examinations would be severely hampered and result in the inability to meet the time and representative rainfall sampling specifications'' (see 60 FR 50829). Another waiver, which is found throughout the permit, allows temporary waivers from sampling requirements based on adverse climatic conditions which also includes periods of extended frozen conditions which make sample collection impractical. Though many facilities located in the State of Alaska appear to have unique climatic conditions, EPA believes that the MSGP provides sufficient flexibility to address those situations.

Another comment requested that inspections in Alaska be performed before ice break-up occurs. Ice break-up affects large areas simultaneously, thus creating difficulty in reaching remote areas. In response, EPA believes that the MSGP provides sufficient flexibility for scheduling inspections, and, as noted above, the inspection frequency for temporarily or permanently inactive oil and gas extraction facilities which are remotely located and unstaffed was modified in response to comments.

One comment was received stating that it should not be necessary to document the inactive/unmanned status of a facility every quarter. The comment stated that the waiver provision contained in the MSGP which addresses these facilities should remain in effect as long as the facility remains unmanned. In response, EPA notes that the chemical sampling waiver for such facilities requires that permittees certify on their Discharge Monitoring Report (DMR) that they are utilizing the waiver in lieu of submitting sampling results for each monitoring period that the waiver is used. However, permittees do not have to submit such certifications on DMR's when utilizing the quarterly visual examination waiver. They are only required to certify uses of this waiver in the facility's SWPPP. EPA does not believe that these provisions create an undue burden on the regulated community. In fact, it provides an opportunity for permittees to maintain an up-to-date status of their inactive and unmanned facilities.

Commenters noted that facilities in Alaska, such as oil and gas facilities and mineral mining facilities, are often located in remote, relatively inaccessible locations and that compliance with the monitoring requirements of the MSGP would be difficult. In response, the MSGP provides a waiver from the chemical and visual monitoring requirements for facilities which are inactive and unstaffed. As such, EPA believes that the MSGP addresses this concern.

Commenters also expressed concern that a good sampling location may be difficult to find at the gravel pads used by the oil and gas industry. In response, EPA notes that the issue concerning a suitable sampling location is not unique to the oil and gas industry. EPA believes that the sampling can still be accomplished by creating an artificial sampling site, or simply sampling at the best available location. A sample for testing may also be obtained by collecting several smaller samples taken at representative discharge locations at the facility. For further guidance on this issue, dischargers should refer to EPA's storm water monitoring guidance manual (EPA 833-B–92–001).

Several additional comments were received from a commenter representing the Alaska oil and gas industry stating that EPA should recognize the special climatic conditions in Alaska. The commenter stated that since storm water runoff in Alaska generally occurs only during the months of April to September, a five-month period, quarterly or six-month inspections or sampling requirements are not appropriate. EPA notes that the MSGP provides an adverse weather sampling waiver which should address the commenter's concern. As noted above, EPA has modified Section I of the MSGP to include the same reduced inspection frequency for temporarily or permanently inactive oil and gas extraction facilities which are remotely located and unstaffed as is found in Section J.

The commenter also raised the following issues:

- Field personnel routinely perform inspections to identify contamination to the environment during their day-to-day duties. The requirement for formal inspections and supporting paperwork duplicates ongoing efforts and provides additional administrative burden to produce and maintain inspection files without providing environmental benefit. This requirement should be deleted in consideration of the significant requirements the oil and gas industry already complies with including the Oil Pollution Act and State of Alaska regulations 18 AAC 75.
- Chemical mixing and storage areas are generally contained within buildings or lined, bermed holding areas as required by the Oil Pollution Act and State of Alaska regulations 18 AAC 75, and should be deleted from detailed description requirements. The requirements for these areas will not provide any increased storm water protection. The requirement for marking hazardous materials duplicates laws and regulations directed toward the regulation of hazardous materials and is unnecessary.
- The reportable quantity release requirements also duplicate the requirements for the Oil Pollution Act and State of Alaska regulations 18 AAC 75 and should be deleted from the permit.
- The proposed site description requirements duplicate the requirements for the Oil Pollution Act and State of Alaska regulations 18 AAC 75 and should be deleted from the permit.

In response to these comments, EPA notes that such existing requirements may be incorporated by reference into the SWPPP to reduce duplication.

Cost Burden

Many comments were received regarding the cost of complying with the MSGP versus the BGP. EPA developed the MSGP to include sufficient flexibility so an operator could design and implement a storm water pollution prevention program (SWPPP) in a cost effective manner provided it meets the goals of the NPDES program and the CWA. For specific industry sectors, costs may vary for the MSGP when compared to the BGP depending on whether the monitoring requirements increased or decreased and the nature of any sector specific BMP requirements. The MSGP also allows dispensation from monitoring under several scenarios if the facility can demonstrate that it doesn't have the potential to discharge parameters requiring monitoring. Requirements for protecting endangered species and historic properties may result in some added expenditures but EPA has minimized that burden to the extent consistent with providing adequate protection of those resources. Otherwise, the burdens and requirements of the MSGP should essentially be the same as for the BGP.

For the MSGP, industry specific BMP requirements resulted from industry supplied data, making the regulated community a participant in the generation of its own permit conditions. These BMPs should be economically attainable since they are in use already at many facilities. Claims made by electric generating facilities that they would face increases of $60,000 to $140,000 for compliance with the new requirements are not felt to be valid, especially since electric generator monitoring requirements were reduced compared to those required by the BGP.

Administrative and paperwork burdens were a concern of one commenter. In response, EPA again notes that the flexibility inherent to general permits largely makes these burdens proportional to each permittees' needs and technical and administrative ability. Paperwork requirements which must be submitted to EPA to satisfy MSGP conditions are minimal (e.g., a completed Notice of Intent form to obtain coverage, a completed Notice of Termination form to end coverage, and Discharge Monitoring Reports if storm water monitoring is required). Since other paperwork and record keeping documents can be completed internally (e.g., SWPPPs, spill and inspection reports), savings of time and money can be realized by permittees.

Some comments were received regarding the need for employing economic analyses because pollution control requires the use of best conventional pollutant control technology (BCT) or best available control technology economically achievable (BAT). The BAT level of performance is the very best control and treatment measures that have been or are capable of being achieved for nonconventional or toxic pollutants. The Agency must consider the cost of attainability, but it is not required to balance cost against the effluent reduction benefits. BCT is the best technology for controlling conventional pollutants and for this EPA must consider the cost of attaining the pollution reduction against the resulting benefits. In many instances it is infeasible to develop numerical end-of-pipe effluent limitations for controlling storm water because the quality and quantity of the storm water at specific sites is unknown. Except for discharges subject to effluent limitation guidelines, the MSGP imposes BMPs as BAT/BCT in lieu of end-of-pipe numeric limitations consistent with 40 CFR 122.44(k)(1) and Natural Resources Defense Council v. Costle, 568 F.2d 1369 (D.C. Cir. 1977). The same lack of data which justifies this use of BMPs also renders it infeasible to precisely quantify the costs of pollutant removal associated with their use. The Agency may not generally use a lack of precise data to avoid imposing BAT/BCT controls; CWA § 401(a)(1)(B) requires it to establish such controls in permits on the basis of best professional judgement (BPJ). Using its BPJ, EPA developed the BMPs that MSGP permittees are required to consider. Consequently, the flexibility accorded permittees in choosing which BMPs to implement in specific situations should avoid unreasonable economic consequences.

Paperwork Reduction Act Requirements

One commenter stated that many aspects of the MSGP are cumbersome and require unneeded paperwork. In response, EPA has required a minimum amount of paperwork under the MSGP and specifically designed the permit to be as streamlined as possible. The only paperwork that is required to be submitted to EPA include a one-page Notice of Intent (NOI), discharge monitoring reports (for some facilities) and a Notice of Termination if a facility is terminating permit coverage. Each of these documents is essential and cannot be eliminated without compromising the integrity of the permit.

One commenter stated that a facility should be able to file only one NOI for the entire facility rather than separate NOI's for each regulated activity, and that support activities and subsectors can be addressed through the facility's SWPPP. In response, EPA notes that the MSGP already requires that only one NOI be submitted per operator per facility, and that multiple activities occurring on-site are addressed through the facility's SWPPP. When multiple activities are conducted by different operators at a facility, each operator is required to submit a NOI for permit coverage and develop a SWPPP which addresses their regulated activities, or work with other on-site operators to develop a single comprehensive plan. Such a situation would occur at an industrial park. Accordingly, the permit will not be revised since it already addresses the commenter's concerns.

One commenter believes few facilities changing from the BGP to the MSGP have storm water discharges that will impact historic properties, or endangered species or critical habitats. The commenter stated that the requirement for all permittees to submit two NOI forms to ensure that the relatively few dischargers that will have an impact are identified is counter to EPA's effort to reduce the burden on the regulated community. In response, the requirement for facilities transitioning from the BGP to the MSGP to submit another NOI, not two NOIs, is necessary to meet the general permit application requirements found at 40 CFR 122.28(b)(2), and to address sections 7(a) (2) and (9) of the Endangered Species Act (ESA) and section 106 of the National Historic Preservation Act (NHPA). The burden to submit an additional NOI is minimal. EPA has provided guidance in the permit to minimize the burden of completing the ESA and NHPA certifications.

Regulatory Flexibility Act Requirements

One commenter stated that EPA did not consider the significant economic impacts on industrial facilities that would result from termination of the BGP. Thus, EPA failed to comply with rulemaking requirements mandated under the Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, other applicable Federal requirements, and the Clean Water Act. The commenter stated that EPA must take the administrative and paperwork burdens imposed on these facilities into account in the storm water program. The commenter recommended that EPA evaluate the costs of the proposed action on smaller businesses.

One commenter stated that under the Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA must prepare an initial and final regulatory flexibility analysis when the Agency has engaged in a notice-and-comment rulemaking action. These analyses must examine, among other things, the impact of EPA's proposal on small entities, and must evaluate other alternatives that the Agency could implement. EPA's decision not to conduct the required analyses under the RFA is contrary to the requirements of the RFA in substantive and procedural respects. The commenter believes the proposed permit modification would have a significant economic impact on numerous types of industrial facilities, and would therefore trigger the requirement to conduct both an initial and final regulatory flexibility analysis as required under SBREFA and the RFA. Further, EPA's assertion that its general storm water permits are not ''rules'' for RFA and Unfunded Mandates Reform Act (UMRA) purposes is contradicted by the applicable case law and other authorities which make clear that all Agency actions such as the proposal which have general applicability and affect the future conduct of regulated entities are properly classified as ''rules.'' EPA has effectively conceded the applicability of the RFA to this proceeding by certifying that the proposed permit modification will not have a significant economic impact on industry pursuant to Section 605(b) of the RFA. The commenter asked EPA to: (1) Withdraw the proposal until an initial regulatory flexibility analysis is prepared and made available for public comment; (2) provide a copy of this analysis to the Small Business Association for review and consultation with affected small businesses; and (3) if a proposed permit is issued following an initial regulatory flexibility analysis, conduct a final regulatory flexibility analysis, including an analysis and explanation of the steps that EPA has taken to minimize the significant economic impacts of the action on small entities and to comply with analysis requirements of SBREFA and RFA.

In view of the comments received, EPA further considered whether NPDES general permits are subject to rulemaking requirements. The Agency reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere. This review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits. EPA also reviewed applicable laws, including the CWA,

relevant CWA case law and the Administrative Procedure Act (APA), as well as the Attorney General's Manual on the APA (1947). On the basis of its review, EPA has concluded that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA.

The APA defines two broad, mutually exclusive categories of Agency actions: ''rules'' and ''orders.'' Its definition of ''rule'' encompasses ''an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *.'' APA section 551(4). Its definition of ''order'' is residual: ''a final disposition * * * of an agency in a matter other than rule making but including licensing.'' APA section 551(6) (emphasis added). The APA defines ''license'' to ''include * * * an agency permit * * *.'' APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule.

Section 553 of the APA establishes ''rule making'' requirements. The APA defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' APA § 551(5). By its terms, then, § 553 applies only to ''rules'' and not also to ''orders,'' which include permits. As the Attorney General's Manual on the APA explains, ''the entire Act is based upon a dichotomy between rule making and adjudication [the agency process for formulation of an order]'' (p. 14).

The CWA specifies the use of permits for authorizing the discharge of pollutants to waters of the United States. Section 301(a) of the CWA prohibits discharges of pollutants ''[except as in compliance with'' specified sections of the CWA, including section 402.33 U.S.C. § 1311(a). Section 402 of the CWA authorizes EPA ''to issue a permit for the discharge of any pollutant * * *, notwithstanding section [301(a) of the CWA].'' 33 U.S.C. § 1342(a). Thus, the only circumstances in which a discharge of pollution may be authorized is where the Agency has issued a permit for the discharge. Courts, recognizing that a permit is the necessary condition-precedent to any lawful discharge, specifically suggested the use of area-wide and general permits as a mechanism for addressing the Agency's need to issue a substantial number of permits. See *NRDC* v. *Train*, 396 F.Supp. 1393, 1402 (D.D.C. 1975); *NRDC* v. *Costle*, 568 F.2d 1369, 1381. (D.C. Cir. 1977). Adopting the courts' suggestion, EPA has made increasing use of general permits in its CWA regulatory program, particularly for storm water discharges.

In the Agency's view, the fact that an NPDES general permit may apply to a large number of different dischargers does not convert it from a permit into a rule. As noted above, the courts which have faced the issue of how EPA can permit large numbers of discharges under the CWA have suggested use of a general *permit*, not a rule. Under the APA, the two terms are mutually exclusive. Moreover, an NPDES general permit retains unique characteristics that distinguish a permit from a rule. First, today's modification of the MSGP is effective only with respect to those dischargers that *choose* to be bound by the permit. Thus, unlike the typical rule, this NPDES general permit does not impose immediately effective obligations of general applicability. A discharger must choose to be covered by this general permit and so notify EPA. A discharger always retains the option of obtaining its own individual permit. Relatedly, the terms of the NPDES general permit are enforceable only against dischargers that choose to make use of the permit. If a source discharges without authorization of a general or an individual permit, the discharger violates § 301 of the Act for discharging without a permit, not for violating the terms of an NPDES general permit.

Because the CWA and its case law make clear that NPDES permits are the congressionally chosen vehicle for authorizing discharges of pollutants to waters of the United States, the APA's rulemaking requirements are inapplicable to issuance of such permits, including today's general permit. Further, while the CWA requires that NPDES permits be issued only after an opportunity for a hearing, it does not require publication of a general notice of proposed rulemaking. Thus, NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law. Accordingly, it is not subject to the RFA.

At the same time, the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit. Indeed, the point of issuing a general permit is to provide a speedier means of permitting large number of sources and save dischargers and EPA time and effort. Since the Agency hopes that many dischargers will make use of a general permit and since the CWA requires EPA to provide an opportunity for ''a hearing'' prior to issuance of a permit, EPA provides the public with notice of a draft general permit and an opportunity to comment on it. From public comments, EPA learns how to better craft a general permit to make it appropriate for, and acceptable to, the largest number of potential permittees. This same process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities. This process, however, is voluntary, and does not trigger rulemaking or RFA requirements.

In the case of the modification to the MSGP being issued today, the Agency has considered and addressed the potential impact of the modification on small entities in a manner that would meet the requirements of the RFA if it applied. EPA has analyzed the potential impact of this modification to the MSGP on small entities and found that it will not have a significant economic impact on a substantial number of small entities. Like the existing general permit, the modification to the general permit will make available to many small entities a streamlined process for obtaining authorization to discharge. Of the possible permitting mechanisms available to dischargers subject to the CWA, NPDES general permits are designed to reduce the reporting and monitoring burden associated with NPDES permit authorization, especially for small entities with discharges having comparatively less potential for environmental degradation than discharges typically regulated under individual NPDES permits. Thus, general permits like the modification of the general permit at issue here provide small entities with a permitting application option that is much less burdensome than NPDES individual permit applications.

EPA is committed to issuing general permits that meet the substantive and procedural requirements of the statute authorizing the particular general permit and any other applicable law. The Agency intends to review its use of general permits across EPA programs to ensure that its general permits meet all applicable requirements.

Protection of Endangered Species

A large number of comments were received regarding provisions in the permit to protect endangered or threatened species. For reading convenience, similar comments have been grouped together for response and are listed below in items A–M.

A. Some commenters have asked whether the permittees must address

only those threatened and endangered species that are listed at Addendum H.

EPA wishes to clarify that permittees must address only those species found in Addendum H. However, the Addendum H list has been updated (as part of the modification) to reflect recent threatened and endangered species listings and proposals and has been expanded to include terrestrial species which may be affected by storm water discharges or construction of best management practices (BMPs) to control those discharges. As a result, the Addendum H list now contains all listed and proposed species for the geographic areas covered by the permit. The Addendum H list will be updated on a regular basis and an electronic copy of that list will be made available at of the Office of Wastewater Management website at ''http://www.epa.gov/owm''. Information on the availability of an electronic list is also being added to the Addendum H instructions.

B. A number of comments were received regarding the area of impacts to be considered for listed species. Some commenters questioned EPA's delineation of the area of impacts to be considered. Some commenters believed the ''Endangered Species Act review'' should encompass the entire site, not just certain portions of the site.

The MSGP criteria of the geographic areas to be examined for effects to species is found in Addendum H. The Addendum H instructions direct applicants to determine if species listed in Addendum H are found in proximity to a facility's storm water discharges. A species would be in proximity to those dischargers where the species is:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water.
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

These location criteria are intended to be flexible to allow for more accurate, site specific determinations of effects to species. The Addendum explicitly notes that the area to be searched/surveyed for listed species will vary with the size of the facility, the nature and quantity of the storm water discharges, and the type of receiving waters.

EPA declines to require that applicants consider effects to species for the ''entire'' site because such criterion may not be flexible enough to accurately account for effects to species from storm water discharges. Some of the facilities covered by this permit may comprise only a very small portion of a large ''site'' or tract of land such as an industrial park. In such instances, a requirement that applicants examine effects to species for the entire site without regard to the location of storm water discharges and BMPs may impose unnecessary costs and other burdens on applicants. In some situations, the suggested criterion may not be sufficiently protective of Addendum H species because it does not extend beyond the borders of a site to the point of discharge (and immediate vicinity) in the receiving water. EPA believes the current criteria provide EPA and applicants with the appropriate degree of flexibility to determine whether species are directly or indirectly affected by storm water discharges and BMPs that are regulated under this permit.

C. Some commenters noted that the species list in Addendum H was outdated and requested that EPA publish an updated list with specific contacts at the Fish and Wildlife Service to answer questions.

EPA is publishing an updated list and is also providing an address list of Fish and Wildlife Service and National Marine Fisheries Service offices in the permit. The Addendum H list will be updated on a regular basis and an electronic copy of the updated list will be made available at of the Office of Wastewater Management website at ''http://www.epa.gov/owm''. Information on the availability of an electronic list is also being added to the Addendum H instructions.

D. Some commenters noted that EPA should provide complete and up-to-date details to applicants and permittees on how to certify compliance with National Historic Preservation Act (NHPA) and ESA.

EPA believes that the permit conditions and Addendum H (including the updated species list) provide comprehensive, current information on how to comply with the Notice of Intent ESA certification provisions. EPA does not believe that it would be possible to provide ''complete information'' to applicants/permittees for these certifications given the number and variety of activities covered by the permit. With respect to the NHPA, see EPA's response to the NHPA comments below.

E. Some commenters have questioned the relevancy of provisions in the MSGP to protect endangered and threatened species. They believe that merely adding requirements to assess threats to species will not enhance pollution prevention, and if these provisions are implemented no companies will identify endangered species and subsequently improve BMPs to prevent storm water pollution. Some commenters believed that the requirements of the ESA apply to applicants regardless of whether there is a permit.

EPA disagrees with the notion that dischargers will simply ignore the requirements of this permit to identify species in accordance with the terms of the permit. Moreover, where species are present, and steps are identified to ensure protection of those species, this could, contrary to these commenters' assertions, enhance pollution prevent efforts. The commenter's point about the ESA applying regardless of whether there is a permit is correct as it relates to section 9 of the Act, which prohibits take of listed species by any person, regardless of whether it is authorized by a federal agency. The NOI screening procedures applicants must undertake should assist them in complying with ESA § 9. In addition, this process facilitates compliance by EPA with ESA § 7(a)(2) in issuing a general permit authorizing numerous storm water discharges in many locations. This process ensures that any needed measures to protect species are implemented, but retains the significant advantages of reducing unnecessary paperwork, to the advantage of both the permittees and EPA. The benefits using a general permit provides to both the Agency and operators could not be realized without these or similar screening procedures. In the absence of a general permit, and given the huge administrative burden that would be associated with permitting these discharges individually (and the resulting likelihood of delays in receiving authorization, some industrial storm water discharges would thus likely have to choose between avoiding the discharges altogether or subjecting themselves to potential liability for violating the CWA § 301(a).

EPA believes the protection of listed and proposed species is an integral goal of the Clean Water Act (CWA), and it is consistent with the goals of both of these statutes that EPA establish the eligibility criteria contained in this general permit. This permit basically establishes an optional process (i.e., an alternative to the individual permitting process) that dischargers may seek to pursue, and which provides the significant advantage for the permittees of potentially receiving authorization to discharge far more quickly that would

be possible through the individual permitting process.

The primary goal of the CWA is the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. This includes the attainment of water quality that provides for the protection and propagation of fish, shellfish, wildlife. See 33 U.S.C. 1251. In EPA's view, the breadth of these goals are entirely consistent with the goal of protecting threatened and endangered species. Moreover, EPA has broad authority under the CWA to include conditions in NPDES that are necessary to implement water quality standards requirements established by the Act, and those standards are designed to ensure to protect, among other things, use of waters by aquatic-dependent wildlife. See CWA sections 301(b)(1)(C) and 303(c).

The eligibility provisions of the MSGP only authorize storm water discharges and the construction of BMPs that are not likely to adversely affect species identified in Addendum H, or are authorized under the ESA through the successful conclusion of ESA § 7 consultation (formal or informal) or by obtaining an ESA § 10 permit. See 60 FR 51112 (Sept. 29, 1995). EPA also notes that § 9 ESA places an obligation on applicants/permittees to ensure that their activities do not result in any prohibited takes of species (e.g., harassment or harm). This obligation applies regardless of whether a discharger's activities are authorized by a federal agency that is subject to the requirements of § 7 of the ESA. Nonetheless, compliance with the eligibility criteria for coverage under this permit should facilitate permittee's compliance with their own obligations under § 9.

F. Some commenters complained about the burden imposed by the MSGP's endangered and threatened species eligibility screening provisions. Other commenters found the Addendum H provisions to be burdensome and impractical for existing dischargers. Other commenters have alleged that these provisions violate the Paperwork Reduction Act (PRA).

The provisions to protect species in the MSGP were drafted in consultation with the Services. They were written to provide applicants the greatest degree of flexibility in ensuring that their activities are protective of endangered and threatened species. The MSGP has been in use since September 29, 1995, and EPA has found that the ESA provisions do not appear to have caused any wide spread delay or difficulties in applicants obtaining permit coverage. Out of a total of over 10,000 applicants, slightly more than 5% reported that Addendum H species were found to be in proximity to the facility. Of that total number, EPA believes that fewer than 10 applicants where denied permit coverage on this basis of impacts to endangered and threatened species. Thus, EPA believes the Addendum H procedures are not overly burdensome to applicants.

With respect to the PRA, EPA notes that the MSGP is covered by current information collection requests (OMB Nos. 2040–0004, 2040–0086, and 2040–0110) and is in compliance with the PRA.

G. Some commenters asserted that the review requirements of the ESA apply to Federal actions but not to those of individual permittees. They believe that EPA is seeking to expand the scope of the ESA to private businesses whose industrial activities cannot reasonably be viewed as actions of the Federal Government. If EPA's approach was consistently applied, some commenters believed that any Federally regulated activity would be subject to ESA review requirements.

Section 7(a)(2) of the ESA requires that Federal agencies consult with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (''the Services'') to insure that any action authorized, funded or carried out by them (also known as ''agency actions'') are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The ESA § 7 implementing regulations at 50 CFR 402 apply this consultation requirement to any action authorized by a Federal agency that may affect listed species or critical habitat, including permits. Those regulations also define action to include, but are not limited to: ''the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid'' or ''actions directly or indirectly causing modifications to the land, water, or air.'' See 50 CFR 402.02. In light of the plain meaning of the ESA and its implementing regulations, EPA believes the scope of consultations on its permit actions must include the actions of its permittees. As explained above, EPA could not comply with ESA § 7(a)(2) in authorizing this many discharges in a reasonable time if it had to make ''no effect'' determinations or consult on each discharge and on each BMP employed to control them.

By allowing them to use procedures functionally equivalent to those EPA uses in issuing individual permits, the Agency has provided a mechanism which applicants may use to avoid long delays which are typically associated with obtaining individual permits for their storm water discharges. Operators that think the NOI screening procedures are too onerous may choose to apply for individual permits, but they should be aware that it will probably take them far longer to obtain discharge authorizations.

With respect to actions authorized by other Federal agencies, those agencies must make their own determinations on the applicability of ESA § 7. See 50 CFR 402.14(a).

H. Some commenters have also noted that the review process selected by EPA is irrational and creates a subsequent risk of unequally treated dischargers.

While EPA is not sure what is meant by ''unequally treated dischargers,'' EPA assumes that the commenters are concerned that the MSGP requires some applicants to undertake measures to protect listed species while not imposing such requirements on others. EPA notes that the permit treats all applicants fairly by requiring that all applicants meet the same eligibility criteria for permit coverage. However, this permit regulates the storm water discharges and requires site-specific storm water controls for thousands of facilities throughout the United States. To require that all permittees develop identical treatment plans would impose unnecessary economic burdens on many permittees and not provide sufficient environmental controls (including those for the protection for listed and proposed species) for others. Instead, the MSGP allows each facility to develop its own individually tailored storm water pollution prevention plan (SWPPP). This gives applicants and permittees the flexibility to ensure that their permitted activities are protective of the environment in a cost efficient manner. Since the presence or absence of listed species are factors that are specific to each facility, EPA believes that the ESA certification process in the permit is the best way to ensure that species are protected in a cost effective manner.

I. Some commenters questioned the accuracy of EPA's list of species and allege that the list is created out of data which is not disclosed on record, and that such a list could impose huge burdens on applicants. The commenters noted that some applicants may have the misfortune to be located in a county which the government claims is occupied by an endangered or threatened species and can be required to undertake, without regard to cost, a full biological survey.

The Addendum H species list is based on a database developed by EPA's Office of Pesticide Programs (OPP). The OPP database was developed in close cooperation with the Services to assist EPA in meeting ESA § 7 consultation requirements for its pesticides programs and has been used successfully in that role for a number of years. Most of the underlying information for the OPP database (and hence the Addendum H list) comes from **Federal Register** notices for listing and proposing endangered and threatened species. These ''listing documents'' undergo public notice and comment and contain information on the location of species (usually in the form of maps). They frequently include county location information. Where more specific information was required to determine which county(ies) species were located in, EPA staff conducted further research, often using the supporting documentation for the listing documents. Where necessary, EPA consulted with the Services' Regional and Field offices that authored a particular listing document. While it is possible that there may be some minor errors because of inherent difficulties in establishing location data for some mobile species, EPA believes that the Addendum H list is substantially accurate for its intended purpose of notifying applicants whether further inquiry is needed to assess whether Addendum H species are in proximity to the facility.

EPA notes that the MSGP does not require that all applicants conduct formal biological surveys to determine if Addendum H species are located in proximity to a facility. In fact, the permit does not require that the applicant use a specific method. Instead, it directs applicants to use the method or methods which best allows them to determine to the best of their knowledge whether species are in proximity to their facility. See 60 FR 51278. These methods may include: Visual inspections, contacting State wildlife agencies or the Services, contacting local or regional conservation groups, as well as conducting biological surveys. EPA notes that slightly more than 5% of permit applicants reported that species were in proximity to their facilities. Overall, EPA does not believe this process imposes too great a burden on applicants.

J. Some commenters noted that any ESA review requirements do not apply to permitting actions undertaken by NPDES authorized States and that EPA should not intend to impose such procedures on States.

EPA agrees with this comment that ESA section 7 does not apply to States but notes that State NPDES permits are issued under State law and are not within the scope of this EPA permitting action.

K. Some commenters have asked that the ESA review procedures be streamlined.

EPA declines to take this action for reasons listed above in item F. above. EPA believes the current approach contained in the MSGP's Addendum H review procedures provides applicants with the greatest degree of flexibility in ensuring the protection of threatened and endangered species in a cost effective manner. To assist applicants with completing the Addendum H review procedures, EPA has updated the County/Species List and provided additional sources which can be referenced after October 8, 1998, to identify future revisions to the list (see comment A of this section).

L. Some commenters complained that the ESA review process cannot provide answers to questions regarding distances downstream from permitted discharges for adverse effect assessments.

EPA cannot provide answers on how far downstream from the point of discharge applicants must search for the presence of species because this area will vary with each facility. Instead, EPA directs applicants to check whether Addendum H species are located in the immediate vicinity of, or nearby, the point of discharge into receiving waters. EPA believes this standard is appropriate given the large number and variety of facilities covered the permit and because any permitted storm water discharges must meet water quality standards (in the receiving waters, including any downstream water quality standards) which are designed to be protective of aquatic life and consequently listed species.

M. Some commenters have expressed concerns about the degree of certainty which must be made in the permit application. The application (i.e., NOI form) requires that applicants certify ''to the best of my knowledge'' that a storm water discharge or construction of a BMP will not impact endangered or threatened species, whereas ESA § 7(a)(3) requires that EPA consult with the US Fish and Wildlife Service where the applicant has ''reason to believe'' that an endangered or threatened species may be present in area affected by his project. The commenters believe it is unfair to hold applicants to a higher standard and have requested that EPA adopt the statutory standard for the NOI.

Congress enacted ESA § 7(a)(3) in 1982 to establish the ''early consultation'' process under which a prospective permit applicant who ''has reason to believe'' a listed species may be present in its project area may compel the prospective permitting agency to consult even before it receives the permit application. This enables prospective applicants to avoid delays in subsequent permit actions and allows them to resolve endangered species issues at an early stage of project planning when submission of a permit application would be premature. The ''reason to believe'' threshold for initiating early consultation does not, however, apply to a Federal agency's obligation to consult under ESA § 7(a)(2). Unless it can rely on an earlier consultation, the agency must consult on any action which may affect listed species regardless of whether it has reason to believe the species is present in the action area. Only after it affirmatively finds no listed species are present may the agency forego consultation if the action might otherwise affect them.

As explained earlier in this notice, the NOI screening process established at Addendum H allows EPA to authorize a large number of discharges in many locations without the delays associated with independent consideration of each discharge and each BMP used to control them. Although it serves some of the same purposes as early consultation, the NOI screening process is designed to allow efficient EPA compliance with ESA § 7(a)(2), not ESA § 7(a)(3). All factual assertions in NPDES permit applications are subject to the ''best of my knowledge'' standard under 40 CFR 122.22(d) and there is no apparent reason to depart from it in NOIs submitted to obtain coverage under the MSGP.

Protection of Historic Properties

Many comments were received regarding permit eligibility requirements to protect historic properties. For reading convenience, similar comments have been grouped together for response and are listed below in items A.–H.

A. A number of commenters contend that EPA has not provided sufficient guidance to assist applicants in completing the National Historic Preservation Act (NHPA) NOI screening process. At a minimum, EPA should provide a list of State Historic Preservation Officers (SHPOs) or State Historic Preservation Agencies.

In response, EPA has included guidance in the final permit modification under new Addendum I

for applicants to use when determining whether their industrial storm water discharge or construction of Best Management Practices (BMPs) to control such discharges, may have an adverse effect on historic properties. The guidance includes a stepwise procedure, an address list of State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and the Advisory Council on Historic Preservation.

B. Some commenters have noted that EPA has failed to mention that adverse impacts to historic resources can include visual impacts and that some areas consider structures as recent as 50 years old to be potentially ''historic.''

EPA acknowledges that adverse effects to historic properties, as defined in the NHPA regulations, can include visual impacts. EPA also acknowledges that historic properties can include structures that are 50 years or older.

C. Some commenters have complained that determining the impacts to ''historic protected resources'' can be cost prohibitive for small businesses and will require the hiring of consultants.

EPA believes that the MSGP provides for the consideration of historic properties in a cost effective manner for all applicants. The vast majority of dischargers covered under the MSGP are existing facilities that discharge storm water into well defined areas or pathways. In most of those situations, EPA believes it is a relatively simple matter to determine if the storm water discharges are adversely affecting historic properties. In many cases, a visual inspection may suffice. While the construction of structural BMPs may have a greater potential impact on historic properties, EPA believes that only a very small percentage of sites will have that potential. EPA expects the likelihood of adverse effects to historic properties will be small for most facilities covered under the MSGP.

D. Some commenters noted that while the MSGP requirements to protect historic resources constitute a significant improvement over past practices, they questioned how EPA intended for NHPA certification to be accomplished. In particular, they wondered whether this certification was left up to the applicant, or whether supporting documentation was required.

EPA is not requiring that applicants provide EPA with any documentation for the basis of their eligibility certifications in the NOI. However, meeting the permit eligibility requirements may require that an applicant enter into a written agreement with a SHPO or THPO which describes mutually agreed upon actions that the applicant will undertake to avoid, reduce or mitigate adverse effects to historic properties. As a general matter, applicants are advised to document the basis of their eligibility certifications since a failure to correctly certify eligibility may render the applicant/permittee ineligible for permit coverage and possibly be subject to Clean Water Act enforcement for unpermitted discharges or other Federal actions.

E. One commenter asked for clarification regarding what was meant by the phrase on the NOI form that asks ''[i]s the applicant subject to and in compliance with a written historic preservation agreement.''

A written historic preservation agreement is an agreement in writing between a SHPO/THPO and an applicant which outlines all measures to be taken by the applicant to mitigate or prevent adverse effects to a historic property. EPA intends for these agreements to document and provide assurance that effects to historic properties from activities regulated by the MSGP are given an appropriate level of consideration. EPA wishes to clarify that the NHPA does not prohibit adverse effects to historic properties. It merely requires that such effects be considered so as to avoid unnecessary harm to historic properties.

F. Some commenters recommended that EPA develop guidance for the NHPA certification provisions that is similar to that which is found at Addendum H for endangered species. Some commenters also complained that EPA does not explain how applicants are to comply with the certification provisions of the NHPA.

As mentioned above in response to comment B., EPA has included such guidance in new Addendum I to the MSGP.

G. Some commenters contend that certifying that discharges have no adverse effects on historic properties has no relevance to controlling pollution from storm water. They have requested that the NHPA provisions be removed from the permit.

As mentioned above in the Fact Sheet to this permit, EPA believes that NHPA § 106 places obligations on it to ensure that effects to historic properties are considered for both the issuance of the MSGP and for those activities regulated by it. In light of those requirements, EPA declines to remove the NHPA eligibility provisions from the permit.

EPA believes its authority to include these eligibility provisions to be well established. The NHPA has been listed in 40 CFR 122.49 of EPA's permit regulations since 1979 as a Federal law which may apply to EPA issuance of NPDES permits. See 44 FR 32917 (June 7, 1979). EPA's regulations at 40 CFR 122.49(b) and 122.43(a) provide for measures in procedures prior to issuance of NPDES permits to protect historic properties where feasible. For purposes of NHPA section 106, EPA's issuance of the MSGP falls within the definition of ''Federal undertakings'' in the existing NHPA regulations which define that term to include ''any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects * * * [and the project, activity, or program is] under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency.'' See 36 CFR 802(o) and 16 USC section 470w(7) which contains a reference to Federal permits in the statutory definition of ''undertaking'' in the 1992 amendments to the NHPA.

While it is possible that some NHPA considerations may not relate to the goal of protecting water quality, many NHPA considerations will relate to that goal; e.g., where BMPs are to be constructed nearby or on historic properties. Therefore, EPA believes that conditions to ensure consideration of historic properties as a precondition for eligibility are appropriate for Federally-issued NPDES general permits.

H. Some commenters have alleged that these NHPA requirements violate the Paperwork Reduction Act (PRA).

In response, EPA notes that information required by applicants to determine if they are eligible for MSGP coverage is authorized by current Information Collection Requests from the US Office of Management and Budget (OMB Nos. 2040–0004, 2040–0086, and 2040–0110) and is in compliance with the Paperwork Reduction Act.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
Timber Products Facilities	Wood treatment facilities must monitor semi-annually for oil and grease, pH, COD, TSS, penta chlorphenol, acute WET total recoverable; arsenic, chromium and copper.	General sawmills and planing mills must collect quarterly grab samples for the following parameters: COD, TSS, and total recoverable zinc during the second and fourth years of permit coverage. Wood preserving facilities must collect quarterly grab samples for the following parameters: total recoverable arsenic and total recoverable copper during the second and fourth years of permit coverage. Log storage and handling facilities must collect quarterly grab samples for TSS during the second and fourth years of permit coverage. Mills, wood containers, and other wood products must collect quarterly grab samples for the following parameters: COD and TSS during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Site map: material handling; treatment, storage, disposal of wastes; liquid storage tanks; processing; treatment chemical storage; treated wood and residue storage; wet and dry decking; untreated wood and residue storage; treatment equipment storage. • Inventory: facilities that have used chlorophenolic, creosote, or inorganic formulations in the past must identify contaminated soils, equipment, and stored materials. • Identify specific BMPs for specific areas of site: good housekeeping measures to limit discharge of wood debris; minimize leachate from decaying wood; minimize dust generation. • Periodic removal of debris from storm water BMPs. • Develop response schedules to limit tracking of spilled materials. Treatment chemicals must be cleaned up immediately. • Develop BMPs for sediment and erosion control in specific areas of site. • Discharges of boiler blowdown, water treatment, wastewaters, non-contact cooling waters, contact cooling waters, wash down waters from treatment equipment and s.w. that have come in contact with site areas where hand spraying of surface protection chemicals is performed are not authorized. • Authorized non-storm water discharges include: discharges from spray down of lumber and wood product storage yards where no chemical additives are used in the spray water and no chemicals are applied to the wood during storage. • Periodic employee training.	Wet deck storage area discharge limitations adopted from 40 CFR 429 Subpart I are as follows: pH range within 6.0 to 9.0. No discharge of debris which can not pass through a 1″ diameter opening. (Note: Wet deck storage area discharges are only allowable under this permit if no chemical additives are used in the spray water or applied to the logs).	• Material handling and unloading and loading areas daily with activity. • Processing and treated wood storage areas monthly for drippage on unprotected soils. • Annual comprehensive site compliance evaluation.
Paper and Allied Products Facilities	Paper and allied products facilities are not subject to monitoring requirements unless they are EPCRA 313 facilities.	Paperboard mills must collect quarterly grab samples for COD during the second and fourth years of permit coverage.	No specific considerations beyond baseline.	NONE	• Annual comprehensive site compliance evaluations must be conducted at least once per year.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
		All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.			
Chemical and Allied Products Manufacturing Facilities	Facilities with storm water discharges that come into contact with solid chemical storage piles must collect annually samples for oil and grease, COD, TSS, pH, and any pollutant limited in an effluent guideline to which the facility is subject.	Industrial inorganic chemical manufacturing facilities (SIC 281) must collect quarterly grab samples for the following parameters: total recoverable aluminum, total recoverable iron, and nitrate + nitrite nitrogen during the second and fourth years of permit coverage. Plastic and synthetic materials manufacturing facilities (SIC 282) must collect quarterly grab samples for total recoverable zinc during the second and fourth years of permit coverage. Soap and detergent manufacturing facilities (SIC 284) must collect quarterly grab samples for the following parameters: total recoverable zinc and nitrate + nitrite nitrogen during the second and fourth years of permit coverage. Agricultural chemical manufacturing facilities must collect quarterly grab samples for the following parameters: total recoverable lead, total recoverable iron, total recoverable zinc, phosphorus, and nitrate + nitrite nitrogen during the second and fourth years of permit coverage.	Site map: location of structures, total area of Industrial Activity • Identify parameters associated with pollutant sources. • Contained areas must have valves or other means to prevent the discharge of a spill or leak. • Schedule regular waste pickup. • Saintain up-to-date inventory. • Consider using berms, curbing, hose connections points, manual valves, drip pans, and overhangs in material storage areas. • Annual employee training.	Limits on the ''contaminated storm water'' at phosphate fertilizer manufacturing facilities. Storm water limits are equivalent to 40 CFR 418. The limits are as follows: Total phosphorus daily maximum = 105.0 mg/L.. Total phosphorus 30-day average = 35.0 mg/L. Fluoride daily max. = 75.0 mg/L. Fluoride 30-day ave. = 25.0 mg/L.	• 2 wet weather and 2 dry weather inspections throughout each year. • Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
		All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.			
Asphalt Paving and Roofing Materials and Lubricant Manufacturers (does not apply to petroleum refineries)	No monitoring is required under the baseline unless the facility is and EPCRA 313 facility.	Asphalt paving and roofing materials manufacturing facilities must collect quarterly grab samples for TSS during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	No specific considerations beyond baseline. Portable plants are covered by permit.	Limits for storm water discharges from asphalt emulsion facilities. The limits, established in 40 CFR Part 443 Subpart A, are as follows: TSS daily maximum = 23 mg/L. TSS 30-day average = 15. Oil and grease daily max. = 15 mg/L. Oil and grease 30-day average = 10 mg/L– pH within range of 6.0 to 9.0.	• Periodic facility inspections. • Annual comprehensive site compliance evaluation. —At least once at portable plants.
Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities	Cement manufacturers and ready mix concrete manufacturers must monitor their discharges annually for oil and grease, COD, TSS, and any pollutant in an effluent guideline to which the facility is subject.	Clay product facilities must collect quarterly grab samples for total recoverable aluminum during the second and fourth years of permit coverage. Concrete product facilities must collect quarterly grab samples for TSS and total recoverable iron during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Removal of spilled material in handling areas by sweeping or other equivalent measures. • Fine solids should be stored in areas not exposed to storm water where practicable. • Must ensure that vehicle washwater is not discharged with storm water.. • Periodic employee training.	Numeric effluent limitations for runoff from storage piles at cement manufacturing facilities established under 40 CFR Part 411.37 are included: TSS ? 50 mg/L. pH within range of 6.0 to 9.0.	• Monthly inspections while the facility is in operation. • Annual comprehensive site compliance evaluation. Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
		All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.			
Primary Metals Facilities	Primary metals facilities must perform semiannual monitoring for: oil and grease, COD, TSS, pH, WET, total recoverable lead, total recoverable cadmium, total recoverable arsenic, chromium, and any pollutant limited in an effluent guideline to which the facility is subject.	Steel works, blast furnaces, and mills must collect quarterly grab samples for the following parameters: total recoverable aluminum and zinc during the second and fourth years of permit coverage. Iron and steel foundries must collect quarterly grab samples for the following parameters: total recoverable copper, zinc, iron, and aluminum and TSS during the second and fourth years of permit coverage. Non-ferrous rolling and drawing must collect quarterly grab samples for the following parameters: total recoverable copper and zinc during the second and fourth years of permit coverage. Non-ferrous foundries must collect quarterly grab samples for the following parameters: total recoverable copper and zinc during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Site map: identify locations of all emissions control equipment • Significant materials should include areas of potential settling or deposition from particulate emissions. • Consider: cleaning or maintenance program, paving areas with vehicle traffic, relocating materials inside, waste removal schedule, product substitution, and covering stockpiles. • Periodic employee training.	NONE	• Quarterly inspections of facility including pollution control equipment. • Annual comprehensive site compliance evaluations.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
Metal Mining (Ore Mining and Dressing) Facilities SIC 10 [Discharges subject to effluent guidelines for mine drainage (40 CFR 440) are not eligible for coverage].	Baseline does not require metal mining facilities to perform any monitoring.	Active copper ore mining and dressing facilities must collect quarterly grab samples for the following parameters: total recoverable copper and total recoverable zinc during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	*Active or Temporarily Inactive* Description of mining activities • Site map-mine boundaries, all outfalls subject to effluent limitations, drainage of process water discharge. • Annual employee training. • Test for non-storm water discharges or discharges subject to effluent limitation guidelines (such as mine drainage or process water of any kind). • Limit erosion and/or remove sediment. *Inactive* Description of the mining activities—— • Site map—existing structural controls, process water discharge points, storm water outfalls. • Inventory of exposed materials—describe significant material that may be at site. • Risk Identification—identify pollutants and their associated sources, assess potential for storm water contamination.	NONE	Active: • Designated equipment and mine areas and sediment & erosion control—monthly. • Annual comprehensive site compliance evaluation. Temporarily inactive: • Designated equipment and mine areas and sediment & erosion control—quarterly. • Annual comprehensive site compliance evaluation except where impractical due to remoteness and inaccessibility in which case inspection must be performed once every 3 years.
Coal Mines and Coal Mining-Related Facilities (Discharges subject to 40 CFR 434 are not allowable. Floor drains from maintenance buildings are excluded).	Baseline does not impose any monitoring for coal mines or related facilities.	Coal mines and coal mining-related facilities must collect quarterly grab samples for the following parameters: TSS, total recoverable aluminum and total recoverable iron during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	*Good housekeeping* • Sweeping or road watering to keep dust down. *Preventive maintenance* • Timely inspection. • Periodic debris and sediment removed from BMP. • Replacement of worn BMP. *Sediment and erosion control* • Plan must contain all reasonable and appropriate SMCRA regulations. • Passive/low maintenance treatment for reducing pollutants from inactive sites. • Consider stabilization and structural measures.	NONE	• Quarterly inspection for active sites and SMCRA inactive. • Annual inspection for inactive sites. • Annual comprehensive site compliance evaluation for all. Annual comprehensive site compliance evaluation.
Oil and Gas Extraction Facilities (only those which had an RQ release that was discharged through a storm water discharge event); petroleum refineries	Baseline does not impose any monitoring on these types of facilities unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Describe measures to clean up RQ releases. • Address vehicle and equipment storage, cleaning, and maintenance areas. • Erosion controls (vegetative and structural practices).		• Quarterly for equipment and vehicles that store or transport hazardous materials. • Weekly inspection of sediment and erosion controls. • Semiannual for all equipment and areas addressed in PPP. • Annual comprehensive site compliance evaluation. • Annual inspections for inactive oil and gas extraction facilities.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
Mineral Mining and Processing Facilities	Baseline does not impose any monitoring on these types of facilities unless they are EPCRA 313 facilities.	Dimension stone, crushed stone, and nonmetallic minerals except fuels mining and processing facilities must collect quarterly grab samples for TSS during the second and fourth years of permit coverage. Sand and gravel mining and processing facilities must collect quarterly grab samples for TSS and nitrate + nitrite nitrogen during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Site map must indicate monitoring points. • Assess the applicability of certain BMPs commonly used at such mining sites. • Sediment and erosion control BMPs must be planned for new activities and implemented for existing activities.	Numeric effluent limitations for mine dewatering discharges in EPA Regions I, II, VI, X and Arizona established under 40 CFR Part 436 are included: TSS daily max. = 45 mg/L. TSS 30 day ave. = 25 mg/L. pH within range of 6.0 to 9.0.	• Quarterly visual inspections of all BMPs for active mines. • Annual inspections for inactive operations. • Annual comprehensive site compliance evaluation for active sites. • Once every 3 years comprehensive site compliance evaluation for inactive sites.
Hazardous Waste Treatment Storage or Disposal Facilities (TSDFs)	Storm water discharges from incinerators and BIFs that burn hazardous waste must semiannually monitor for ammonia, magnesium (dissolved), TKN, COD, TDS, TOC, oil and grease, pH; total recoverable: arsenic, barium, cadmium, chromium, cyanide, lead, selenium, silver; total mercury; and acute WET.	TSDFs must collect quarterly grab samples for the following parameters: ammonia, magnesium, COD, total recoverable arsenic, total recoverable cadmium, free cyanide, total recoverable lead, total recoverable mercury, total recoverable selenium, and total recoverable silver during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Specific pollutants of concern should be identified under risk identification.	NONE	• Inspect equipment and areas of facility at intervals specified in plan. • Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
		All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.			
Landfills, Land Application Sites, and Open Dumps	Land disposal units must monitor semiannually for ammonia, magnesium (dissolved), TKN, COD, TDS, TOC, oil and grease, pH; total recoverable: arsenic, barium, cadmium, chromium, cyanide, lead, selenium, silver; total mercury; and acute WET.	Landfills, land application sites, and open dumps must collect quarterly grab samples for total recoverable iron and TSS during the second and fourth years of permit coverage. Municipal solid waste landfills closed in accordance with 40 CFR 258.60 are not required to monitor total recoverable iron. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	—Must identify specific waste that have been disposed. —Provide data on leachate generated at the site. —Additional sources of pollutants must be identified under risk identification. —Tracking system for waste disposed. —Additional sediment and erosion control requirement.	NONE	Active landfills: —Inspections—weekly. —Monthly for finally stabilized facilities and those located in arid areas. —*Monthly* inspections if stabilized on during arid seasons. Inactive landfills-quarterly Annual comprehensive site compliance evaluation.
Automobile Salvage Yards	Automobile salvage yards must collect annual grab and composite samples for the following parameters: oil and grease, pH, COD, and TSS. Requirements apply only to facilities where the following is exposed to storm water: (a) over 250 auto/truck bodies with drivelines, 250 drivelines, or any combination thereof, or (b) over 500 auto/truck units, or (c) over 100 units dismantled per year where automotive fluids are drained or stored.	Automobile salvage yards must collect quarterly grab samples for total recoverable iron, total recoverable aluminum, total recoverable lead, and TSS during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Site map: monitoring points, total area of industrial activities • Identify parameters associated with pollutant sources. • Drain vehicles of fluids or other equivalent measures.	NONE	• Cars upon arrival for leaks. • Oily equipment 4X/yr for leaks. • Storage of fluids (including containers) 4X/yr for leaks. • BMPs 4X/yr. • Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
Scrap and Waste Material Processing and Recycling Facilities (Permit conditions broken out between facilities that handle non-liquid recyclable wastes and facilities that handle liquid recyclable wastes).	Baseline imposes monitoring requirements on facilities engaged in reclaiming batteries. Battery reclaimers must monitor semi-annually for oil and grease, COD, TSS, pH, copper, and lead.	Scrap and waste material processing and recycling (non-liquid) facilities must collect quarterly grab samples for the following parameters: total recoverable copper, total recoverable aluminum, total recoverable iron, total recoverable lead, total recoverable zinc, COD, and TSS during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Site map: identify locations of all scrap processing equipment and locations of all significant material storage, e.g., scrap. • Schedule preventative maintenance of all pollution control equipment. • Erosion and sediment controls. • Inbound recyclable materials control program, scrap lead-acid battery program. • Control of storm water discharges from turnings piles exposed to cutting fluids.	NONE	Non-liquid Recyclable Waste Facilities: • Quarterly inspections of facility including pollution control equipment . • Annual comprehensive site compliance evaluations. Liquid Recyclable Wastes: • Site inspections. • Annual comprehensive site compliance evaluations.
Steam Electric Power Generating Facilities, Including Coal Handling Areas and Coal Piles	Baseline requires oil fired facilities to sample storm water annually for oil and grease, COD, TSS, pH, and any pollutant limited in an effluent guideline. Baseline requires coal-fired for steam electric to sample annually for oil and grease, pH, TSS, total recoverable copper, nickel, and zinc from coal handling sites (other than runoff from coal piles, which is not eligible for coverage).	Steam electric generating facilities must collect quarterly grab samples for total recoverable iron during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Tracking of fugitive dusts. • Liquid storage tank controls. • Measures to reduce oils spills. • Controls of oil bearing equipment in switchyards. • Annual employee training.	Numeric effluent limitations for coal pile runoff established under 40 CFR Part 423 effluent limitations are as follows: TSS ? 50 mg/L. pH within range of 6.0 to 9.0. (Note: These effluent limitations apply to all sectors with coal pile runoff.)	• In addition to or as part of the comprehensive site evaluation, the following areas must be inspected on a monthly basis: coal handling areas, loading/unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas. • Annual comprehensive site compliance evaluation.
Motor Freight Transportation Facilities, Passenger Transportation Facilities, Rail Transportation Facilities, and United States Postal Service Transportation Facilities	Baseline does not impose monitoring on these facilities unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Site Map: vehicle and equipment storage areas • Measures and Controls: —Vehicle and equipment storage areasCconfined to designated area; prevent or minimize contamination. —Fueling areaCprevent or minimize contamination. —Material Storage Areas—maintain containers in good condition; prevent or minimize contamination. —Vehicle and equipment cleaning areas—prevent or minimize contamination.	NONE	• Qualified facility or company personnel shall be identified to perform inspection on a quarterly basis. • Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
			—Vehicle and equipment maintenance areas—prevent or minimize contamination. —Sanding areas—prevent or minimize contamination. • Spill Prevention and Response—SPCC plan may be referenced. • Annual Employee Training—on specified topics. • Attach copy of washwater NPDES or IU permit/application.		
Water Transportation Facilities That Have Vehicle Maintenance Shops and/or Equipment Cleaning Operations	Baseline does not impose monitoring on these types of facilities unless they are EPCRA 313 facilities.	Water transportation facilities must collect quarterly grab samples for total recoverable aluminum, total recoverable iron, total recoverable lead, and total recoverable zinc during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	Site map: vessel maintenance and repair, pressure washing, painting, sanding, blasting, welding, metal fabrication, liquid storage areas, and material storage areas. • Measures and Controls —Pressure washing areas—collect and contain discharge, remove all visible solids, identify where washwater is released. —Blasting and Painting Areas—consider containing activities; prevent or minimize contamination. —Material Storage Areas—all materials stored in protected, secured location; prevent or minimize contamination; describe containments or enclosure. —Engine Maintenance and Repair Areas—prevent or minimize contamination. —Material Handling Areas—prevent or minimize contamination. —Drydock Activities—prevent or minimize contamination. —General Yard Area—schedule routine yard cleanup. • Annual employee training.		• Monthly in specified areas, including: —Pressure washing area. —Blasting, sanding, and painting areas. —Material storage areas. —Engine maintenance and repair areas. —Material handling areas. —Drydock areas. —General yard area. • Annual comprehensive site compliance evaluation.
Ship and Boat Building or Repairing Yards	Baseline permit requires annual monitoring for: oil and grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	Site map: vessel maintenance and repair, pressure washing, painting, sanding, blasting, welding, metal fabrication, liquid storage areas, and material storage areas. • Measures and Controls —Pressure washing areas—collect and contain discharge, remove all visible solids, identify where washwater is released. —Blasting and Painting Areas—consider containing activities; prevent or minimize contamination. —Material Storage Areas—all materials stored in protected, secured location; prevent or minimize contamination; describe containments or enclosure. —Engine Maintenance and Repair Areas—prevent or minimize contamination. —Material Handling Areas—prevent or minimize. —Drydock Activities—prevent or minimize. —General Yard Area—schedule routine yard cleanup. • Annual employee training on specified topics.	NONE	• Monthly in specified areas • Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas Located at Air Transportation Facilities	Baseline requires those airports with over 50,000 flight operations per year to sample oil and grease, pH, BOD5, COD, TSS, and the primary ingredient used in deicing materials.	Facilities that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or more than 100 tons of urea on an average annual basis, shall prepare annual pollutant loading estimates for discharges of spent deicing/anti-icing chemicals and collect quarterly grab samples for BOD, COD, ammonia, and pH during the second and fourth years of permit coverage. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Site maps must be developed for areas occupied by the tenant(s) of the airport facility. • Summary of potential pollutant sources: maintain a record of the types and quantities of deicing chemicals used. • Source reduction: evaluate alternative operating procedures which reduce the overall amount of deicing chemicals used and/or lessen the environmental.	NONE	• In addition to comprehensive site evaluation and standard inspections, 1/week for areas where deicing operations are being conducted. • Annual comprehensive site compliance evaluation.
Treatment Works	Baseline does not require monitoring unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	Annual employee training.	NONE	• Inspect equipment and industrial areas periodically. • Annual comprehensive site compliance evaluation.
Food and Kindred Products Facilities	Animal handling/meat packaging facilities must annually collect grab and composite samples (where appropriate) for BOD, oil and grease, COD, TSS, TKN, Total Phosphorus, pH, and fecal coliform.	Grain mill product facilities must collect quarterly grab samples for TSS during the second and fourth years of permit coverage. Fats and oils facilities must collect quarterly grab samples for BOD, COD, TSS and nitrate + nitrite nitrogen during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Site map to indicate all industrial activities exposed to storm water. • Pest control chemical application/storage practices. • Annual inspections of potential pollutant source areas. • Annual employee training.	NONE	Routine inspection of: • Loading/unloading areas. • storage areas. • Waste management units. • Vents and stacks from industrial activities. • Spoiled products and broken product container holding areas. • Animal holding pens. • Staging areas. • Air pollution control equipment. Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities	Baseline does not impose monitoring on these types of facilities unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Summary of potential pollutant sources: industry-specific-significant materials, industrial activities (examples listed). • Measures and controls: —Material storage area: store materials in a protected area; prevent and minimize contamination; describe containment of enclosure for materials stored outdoors. —Fueling areas—prevent or minimize contamination. —Above ground storage tank areas—prevent or minimize contamination. —Annual employee training.	NONE	• Monthly, include: all containments, storage areas, transfers, and transmission lines; spill prevention; good housekeeping practices; management of process waste products; all structural and nonstructural management practices. • Annual comprehensive site compliance evaluation.
Wood and Metal Furniture and Fixture Manufacturing Facilities	Baseline does not require these types of facilities to monitor storm water discharges unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Ineffective BMPs must be recorded and date of corrective action noted.	NONE	• Quarterly inspections of designated areas. • Annual comprehensive site compliance evaluation.
Printing and Publishing Facilities	Baseline does not impose monitoring on these facilities unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Good housekeeping; address material handling/storage; fueling. • Employee training annually on specified topics.	All materials must be stored in protected area away from drains and labeled.	Annual inspection—all containment and material storage areas, fueling areas, loading and unloading areas, equipment cleaning areas. Annual comprehensive site compliance evaluation.
Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	Baseline requires monitoring at rubber manufacturer when storm water contacts solid chemical storage areas.	Rubber product manufacturing facilities must collect quarterly grab samples for total recoverable zinc during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	Rubber Product Manufacturers: • Review the use of zinc and possible means for zinc to enter s.w. discharges. • Develop specific BMPs to control zinc.	NONE	Perform routine inspections as required within the permit. Annual comprehensive site compliance evaluation.
Leather Tanning and Finishing Facilities	Baseline does not impose monitoring requirements on leather tanning facilities unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	Address: —Material storage areas. —Buffing/shaving areas. —Receiving, unloading and storage areas. —Outdoor storage of contaminated equipment. —Waste management. Annual employee training.	NONE	Quarterly inspections of leather processing vehicle and equipment maintenance areas, material storage areas, loading and unloading areas, and waste management areas. Annual comprehensive site compliance evaluation.

APPENDIX B—SUMMARY OF MSGP AND BASELINE PERMIT REQUIREMENTS—Continued

Sector	Monitoring		MSGP sector-specific SWPPP considerations	Performance standards/limits	Inspections
	Baseline	MSGP			
Fabricated Metal Products Industry	Baseline does not impose monitoring on these facilities unless they are EPCRA 313 facilities.	Fabricated metal products except coating manufacturing facilities must collect quarterly grab samples for the following parameters: total recoverable iron,total recoverable aluminum, total recoverable zinc, and nitrate + nitrite nitrogen during the second and fourth years of permit coverage. Fabricated metal coating and engraving manufacturing facilities must collect quarterly grab samples for the following parameters: total recoverable zinc and nitrate + nitrite nitrogen during the second and fourth years of permit coverage. All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed. All facilities may exercise the low concentration waiver, inactive and unstaffed waiver, or alternative certification in lieu of analytical monitoring.	• Focus primarily on storage areas, unloading and loading areas, and any other area where outside operations occur. • Address: storage areas for raw metal, receiving, unloading, and loading areas, storage of heavy equipment, metal working fluid areas, unprotected liquid storage tanks, chemical cleaners and wastewaters, raw steel collection, paints and painting equipment, hazardous waste storage, chemical transportation, galvanized products, vehicle and equipment maintenance, wooden pallets and empty drums, and retention ponds.	NONE	Periodic inspections of raw metal storage areas, finished product storage areas, material and chemical storage areas, recycling areas, loading and unloading areas, equipment storage areas, paint areas, fueling and maintenance areas, and waste management areas. Annual comprehensive site compliance evaluation.
Facilities That Manufacture Transportation Equipment, Industrial, *or Commercial Machinery Manufacturers	Baseline does not impose monitoring on these facilities unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	• Annual employee training on specified topics. • Good housekeeping for exposed areas. • Spill prevention and response procedure for exposed areas.	NONE	Annual inspections for loading and unloading areas, storage areas, waste management units, and vents and stacks. Annual comprehensive site compliance evaluation.
Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods	Baseline does not impose monitoring on these facilities unless they are EPCRA 313 facilities.	All facilities must conduct quarterly visual examinations of storm water discharges unless inactive and unstaffed.	There are no considerations beyond the baseline.	NONE	Perform routine inspections. Annual comprehensive site compliance evaluation.

These permit modifications shall become effective on the date of publication in the **Federal Register**.

Final Permit Modification

This permit modification shall become effective on September 30, 1998.

Region 1

Signed and issued this 29th day of June, 1998.

Linda M. Murphy,

Director, Office of Ecosystem Protection.